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Thursday
May 23, 1996

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

CFR Correction

In title 5 of the Code of Federal Regulations, parts 700 to 1199, revised as of January 1, 1996, on page 371, the second § 890.107 entitled ''Legal actions'' should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to make corrections and add delegations of authority.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On November 8, 1995, USDA published in the Federal Register (60 FR 56392–56465) a revision of the delegations of authority appearing in 7 CFR Part 2 due to a reorganization of the Department. The revised delegations effectuated the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354. This document makes correction and adds delegations of authority that were omitted in that Federal Register document. In the Federal Register document published on December 27, 1995 (60 FR 66713), the authority citation was revised. The authority citation continues to read as it was published in that document.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and, thus is exempt from the provisions of that Act. The delegations of authority are revised to delete references to section 610 of the Agricultural Act of 1970, and the National Wool Act of 1954, since those provisions were repealed; to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator, Foreign Agricultural Service, the authority to carry out various commodity research and promotion acts which were omitted from their delegations; and to make corresponding changes to the delegations of authority to the Assistant Secretary for Marketing and Regulatory Programs and the Administrator, Agricultural Marketing Service, since those officials administer portions of the same commodity research and promotion acts. Accordingly, 7 CFR Part 2 is revised as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

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

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

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.16 is amended by removing and reserving paragraph (a)(1)(xi) and by revising paragraph (a)(3)(x) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *

(1) * * *

(xi) [Reserved]

* * * * *

(3) * * *

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); and the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop

foreign markets for U.S. agricultural products.

* * * * *

3. Section 2.22 is amended by revising paragraphs (a)(1)(viii) (H), (FF), (GG), (II), (PP), (UU), and (VV), by removing and reserving paragraph (a)(1)(viii)(V), and by adding paragraph (a)(1)(viii)(WW) to read as follows:

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) * * *

(1) * * *

(viii) * * *

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(V) [Reserved]

* * * * *

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x); and

(WW) The Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x).

* * * * *

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.42 [Amended]

4. Section 2.42 is amended by removing and reserving paragraph (a)(13).

5. Section 2.43 is amended by revising paragraph (a)(24) to read as follows:

§ 2.43 Administrator, Foreign Agricultural Service.

(a) * * *

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); and the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

6. Section 2.79 is amended by revising paragraphs (a)(8) (ix), (xl), (xli), (xliii), (l), (lv), (lvi), by removing and reserving paragraph (a)(8)(XXIX), and by adding paragraph (lvii) to read as follows:

§ 2.79 Administrator, Agricultural Marketing Service.

(a) * * *

(8) * * *

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as specified in § 2.43(a)(24);

* * * * *

(xxix) [Reserved]

* * * * *

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616), except as specified in § 2.43(a)(24);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as specified in § 2.43(a)(24);

* * * * *

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as specified in § 2.43(a)(24);

* * * * *

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as specified in § 2.43(a)(24);

* * * * *

(lv) the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(lvi) the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as specified in § 2.43(a)(24); and

(lvii) the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as specified in § 2.43(a)(24).

* * * * *

For Subpart C:

Dated: May 13, 1996.

Don Glickman,

Secretary of Agriculture.

For Subpart F:

Dated: April 1, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart N:

Dated: Arpil 3, 1996.

Michael V. Dunn,

Assistant Secretary for Marketing and Regulatory Services.

[FR Doc. 96–12852 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No. 1677–94]

RIN 1115–AD84

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 96–44]

RIN 1515–AB64

Customs/INS Field Organizations; Revocations and Designation of International Airport Status for Customs Services and Ports of Entry for Aliens Arriving by Aircraft

AGENCIES: Immigration and Naturalization Service, Justice; Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations of both the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) pertaining to their respective field organizations. The document removes Eagle Pass Municipal Airport located in Eagle Pass, Texas, as an international airport for Customs purposes and as a port of entry for aliens arriving by vessel or by land transportation for Service purposes. This document also designates Maverick County Airport located in Maverick County, Texas, as a new international airport for Customs purposes and as a port of entry for aliens arriving by vessel, land transportation, or by aircraft for Service purposes. These changes will assist both agencies in their continuing efforts to achieve more efficient use of their personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT:

At Customs Service—Priscilla Frink, Passenger Operations Division, Office of Field Operations, (202) 927–1323;

At Immigration and Naturalization Service—Andrea Sickler, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street, N.W., Room 7228, Washington, D.C. 20536, (202) 616–7993.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1995, the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) published a joint notice of proposed rulemaking in the Federal Register (60 FR 15703) that solicited comments concerning proposals to amend their respective regulations regarding their field organizations. Customs proposed amending § 122.13 of the Customs Regulations (19 CFR 122.13), which lists international airports, to reflect (1) The revocations of international airport designations for Ranier International Seaplane Base located in Ranier, Minnesota, and Eagle Pass Municipal Airport located in Eagle Pass, Texas, and (2) the designation of Maverick County Airport located in Maverick County, Texas, as an international airport. Similarly, the Service proposed amending 8 CFR 100.4(c)(2) and (3) which pertain to ports of entry for aliens arriving by vessel, land transportation, or by aircraft, to reflect (1) The removal of the same two ports of entry (Ranier International Seaplane Base in the Service District of St. Paul, Minnesota, and Eagle Pass Municipal Airport in the Service District of San Antonio, Texas), and (2) the designation of Maverick County Airport as a port of entry for the processing of aliens arriving by vessel, land transportation, or by aircraft.

At the time of drafting the joint notice of proposed rulemaking it was believed that the proposed changes to the field organizations of the two agencies would not result in any significant reduction in Customs/Immigration services in those areas. Future Minnesota transactions were to be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports. Future Texas transactions were to be handled at Maverick County Airport, also a landing rights airport, which was to be designated as an international airport for Customs purposes and a port of entry for Service purposes. The public comment period for the proposed amendments closed May 26, 1995.

Discussion of Comments

Ranier

Two comments were received, both protesting the revocation/withdrawal of the international airport/port of entry designation for Ranier International Seaplane Base located in Ranier, Minnesota. Both comments stated that revocation of the Ranier International Seaplane Base would be inappropriate because the facility was important to the commercial and private seaplane traffic crossing at the Ontario and Northern Minnesota borders. Accordingly, after further consideration of the matter and discovering that the community has taken action to improve the inspection facilities at the Seaplane Base and to eliminate unsafe working conditions, Customs and the Service have decided to withdraw their proposal regarding the revocation/withdrawal of international airport/port of entry status for Ranier International Seaplane Base, Minnesota.

Eagle Pass/Maverick

No comments were received regarding the: (1) Revocation/withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. Accordingly, after further consideration of this matter, Customs and the Service have decided to proceed with the final rule respecting this change in their field organization. However, it will not be necessary to amend 8 CFR 100.4(c)(3) to remove ''Eagle Pass, TX, Eagle Pass Airport'' as a port of entry for aliens arriving by aircraft, since this action has already been accomplished by the Service in a final rule published on November 14, 1995, at 60 FR 57165.

Conclusion

Accordingly, Customs and the Service are amending their respective regulations regarding the: (1) Revocation/withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. The International Seaplane Base located in Ranier, Minnesota, will continue to provide Customs and Immigration services.

Authority

This change is proposed under the authority of 5 U.S.C. 301, 8 U.S.C. 1103, and 19 U.S.C. 2, 66, and 1624.

Inapplicability of the Regulatory Flexibility Act and Executive Orders 12606, 12612, and 12866

Although the joint notice of proposed rulemaking published solicited public comments, because these regulatory amendments relate to agency management and organization matters, pursuant to the provisions of 5 U.S.C. 553(a)(2), they are not subject to the notice and public procedure requirements. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to the provisions of E.O. 12606, the Commissioners of Customs and the Immigration and Naturalization Service certify that they have assessed these amendments in light of the criteria

set forth in that E.O., and determined that this regulation will not have a significant impact on family formation, maintenance, and general well-being.

Pursuant to the provisions of E.O. 12612, it is certified that this regulation has been assessed in light of the principles, criteria, and requirements specified in that E.O. and that they will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the preparation of a Federalism Assessment is not warranted.

This document does not meet the criteria for a ''significant regulatory action'' as defined in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, U.S. Customs Service; however, personnel from other offices and agencies participated in its development.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations and part 122 of chapter I of title 19 of the Code of Federal Regulations are amended as follows:

Title 8—Aliens and Nationality

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. In § 100.4, paragraph (c)(2) is amended by:

a. Removing ''Eagle Pass, TX'' from the Class A listing under District No. 14—San Antonio, Texas; and by

b. Adding, in proper alphabetical sequence, ''Maverick, TX'' to the Class A listing under District No. 14—San Antonio, Texas.

3. In § 100.4, paragraph (c)(3) is amended by adding, in proper alphabetical sequence, ''Maverick, TX, Maverick County Airport'' to the Class A listing under District No. 14—San Antonio, Texas.

Title 19—Customs Duties

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C. app. 1509.

§ 122.13 [Amended]

2. In § 122.13, the list of international airports is amended by removing ''Eagle Pass, Tex.—Eagle Pass Municipal Airport'' and adding, in appropriate alphabetical order, ''Maverick, Tex.—Maverick County Airport''.

Approved: May 2, 1996.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

April 12, 1996.

Doris Meissner,

Commissioner of Immigration and Naturalization Service.

[FR Doc. 96–12883 Filed 5–22–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–125; Special Conditions No. 25–ANM–115]

Special Conditions: Dassault Aviation Model Falcon 900EX Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 900EX airplane. This airplane is a derivative of the Model Mystere-Falcon 900, which is itself derived from the Mystere-Falcon 50, and will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 14, 1996. Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–125, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–125. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas Groves, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1503; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–125.'' The postcard will be date stamped and returned to the commenter

Background

On March 3, 1993, Dassault Aviation, B.P 24—33701 Merignac CEDEX,

France, applied for an amendment to type certificate A46EU to include the Model Falcon 900EX airplane. The Falcon 900EX is a modified version of the Model Mystere-Falcon 900, which is itself a derivative of the Model Mystere-Falcon 50. The Falcon 900EX is intended to be used as a twelve passenger executive airplane with a maximum takeoff weight of 49,000 pounds and a maximum operating altitude of 51,000 feet.

Type Certification Basis

Under the provisions of § 21.101, Dassault Aviation must show that the Model Falcon 900EX meets the applicable provisions of the regulations incorporated by reference in Type Certificate A46EU, or the applicable regulations in effect on the date of application for change to the Model Mystere-Falcon 900. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A46EU are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–34, and certain special conditions and later amended sections of part 25 that are not relevant to these special conditions. These special conditions will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Falcon 900EX must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model Falcon 900EX because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with Title 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be further amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Falcon 900EX incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air Data Computers, Autothrottle, Engine Instrument Display (EID), Bleed Air System Computer (BASC), and a Digital Electronic Engine Control (DEEC) system that controls critical engine parameters. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model Falcon 900EX, which require that new technology electrical and electronic systems, such as the EFIS, DEEC, etc., be designed and installed to preclude component damage and interruption of function due to both the direct ant indirect effects of HIRF.

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz ...	60	60
500 KHz—2000 KHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1000 MHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4GHz	6,680	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to the Dassault Aviation Model Falcon 900EX. Should Dassault Aviation apply at a later date for further amendment to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 900EX airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow

interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 900EX series airplanes.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 14, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–13026 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No 28583; Amdt. No. 1729]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective June 20, 1996*

Gulf Shores, AL, Jack Edwards, VOR or GPS–A, Amdt 2
Anchorage, AK, Anchorage Intl, ILS/DME RWY 14, Orig
Sand Point, AK, Sand Point, MLS RWY 13, Orig
Rome, GA, Richard B. Russell, LOC/DME RWY 1, Amdt 3, CANCELLED
Rome, GA, Richard B. Russell, ILS/DME RWY 1, Orig
Wichita, KS, Beech North, VOR OR GPS–D, Orig, CANCELLED
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 15, Amdt 1
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 33, Amdt 1
Blanding, UT, Blanding Muni, GPS RWY 35, Orig

** * * Effective July 18, 1996*

Georgetown, DE, Sussex County, GPS RWY 4, Orig
Douglas, GA, Douglas Muni, VOR–A, Amdt 6, CANCELLED
Houma, LA, Houma-Terrebonne, GPS RWY 18, Orig
Norfolk, NE, Karl Stefan Memorial, VOR OR GPS RWY 1, Amdt 7
Painesville, OH, Concord Airpark, VOR/DME or GPS–A, Amdt 1, CANCELLED
Painesville, OH, Concord Airpark, VOR or GPS–A, ORIG
York, PA, York, GPS RWY 34, Orig
George West, TX, Live Oak County, GPS RWY 13, Orig
Lufkin, TX, Angelina County, GPS RWY 25, Orig

** * * Effective August 15, 1996*

Oceanside, CA, Oceanside Muni, GPS RWY 6, Orig
Bartow, FL, Bartow Muni, GPS RWY 9L, Orig
Indianapolis, IN, Greenwood Muni, GPS RWY 19, Orig
Bardstown, KY, Samuels Field, GPS RWY 20, Orig
Jennings, LA, Jennings, GPS RWY 8, Orig
Nantucket, MA, Nantucket Memorial, GPS RWY 33, Orig
Willmar, MN, Willmar Muni-John L. Rice Field, GPS RWY 10, Orig
Portsmouth, NH, Pease International Tradeport, GPS RWY 16, Orig
Belen, NM, Alexander Muni, GPS RWY 21, Orig
Lovington, NM, Lea County-Zip Franklin Memorial, GPS RWY 3, Orig
Lovington, NM, Lea County-Zip Franklin Memorial, GPS RWY 21, Orig
Monongahela, PA, Rostraver, GPS RWY 25, Orig
Shamokin, PA, Northumberland County, GPS RWY 26, Orig
Washington, PA, Washington County, GPS RWY 9, Orig
North Kingstown, RI, Quonset State, GPS RWY 34, Orig
Andrews, TX, Andrews County, GPS RWY 15, Orig
Fort Stockton, TX, Fort Stockton-Pecos County, GPS RWY 12, Orig
Hondo, TX, Hondo Muni, GPS RWY 17L, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 15, Orig
Pleasanton, TX, Pleasanton Muni, GPS RWY 34, Orig

[FR Doc. 96–13034 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28584; Amdt. No. 1730]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

By Subscription—Copies of all SIAPS, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available

for examination or purchase as stated above.

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
04/19/96	MS	McComb	McComb-Pike County-John E. Lewis Field.	6/2335	NDB OR GPS RWY 15, AMDT 4... THIS REPLACES 96–11
05/02/96	FL	Fort Pierce	St Lucie County Intl	6/2673	ILS RWY 9 ORIG...
05/02/96	FL	Vero Beach	Vero Beach Muni	6/2670	NDB RWY 11R AMDT 2B...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2652	VOR/DME OR GPS RWY 21, AMDT 7...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2653	VOR OR GPS RWY 3, AMDT 14...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2656	IL RWY 3, ORIG...
05/03/96	KS	McPherson	McPherson	6/2720	VOR/DME RWY 36 AMDT 5...
05/03/96	MI	Lansing	Capital City	6/2699	ILS RWY 10R AMDT 9...
05/03/96	NE	Crete	Crete Muni	6/2712	NDB RWY 17 AMDT 1...
05/03/96	NE	Crete	Crete Muni	6/2714	NDB RWY 35 AMDT 1...
05/03/96	NE	Crete	Crete Muni	6/2715	VOR/DME OR GPS RWY 17 AMDT 2...
05/03/96	NE	Crete	Crete Muni	6/2716	VOR/DME OR GPS RWY 35 AMDT 2...
05/03/96	TX	Houston	May	6/2695	VOR/DME OR GPS–A ORIG...
05/07/96	IA	Marshalltown	Marshalltown Muni	6/2790	NDB RWY 12, AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
05/07/96	IA	Waterloo	Waterloo Muni	6/2792	VOR RWY 6, AMDT 2...
05/08/96	IA	Marshalltown	Marshalltown Muni	6/2819	VOR OR GPS RWY 12, AMDT 7...
05/08/96	WA	Everett	Snohomish County/Paine Field	6/2831	NDB OR GPS RWY 16R AMDT 12...
05/09/96	WI	Cable	Cable Union	6/2862	NDB OR GPS–B, AMDT 9...
05/09/96	WI	Hayward	Hayward Muni	6/2864	VOR RWY 20, AMDT 5...
05/09/96	WI	Hayward	Hayward Muni	6/2872	NDB OR GPS RWY 20, AMDT 11...
05/09/96	WI	Madison	Dane County Regional-Truax Field	6/2866	VOR OR TACAN OR GPS RWY 13, AMDT 23...
05/10/96	GA	Atlanta	Fulton County Airport Brown Feild	6/2894	ILS RWY 8 AMDT 15B...
05/10/96	GA	Atlanta	Fulton County Airport/Brown Field	6/2895	NDB OR G PS RWY 8 AMDT 2...
05/10/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2898	NDB RWY 3 ORIG...
05/10/96	MO	Rolla	Rolla Down-Town	6/2892	VOR/DME–A, AMDT 2...
05/10/96	WI	Marschfield	Marshfield	6/2886	NDB OR GPS RWY 16 AMDT 9...
05/10/96	WI	Marshfield	Marshfield Muni	6/2887	NDB OR GPS RWY 4 AMDT 13...
05/10/96	WI	Marshfield	Marshfield Muni	6/2888	SDF RWY 34 AMDT 6...
05/11/96	WA	Everett	Snohomish County/Paine Field	6/2911	ILS RWY 16R, AMDT 18...
05/14/96	LA	Alexandria	Alexandria Esler Regional	6/2983	LOC BC RWY 8, AMDT 10...
05/14/96	MS	Greenwood	Greenwood-Leflore	6/2978	ILS RWY 18 AMDT 4...
05/14/96	MS	Grenada	Grenada Muni	6/2979	ILS RWY 13 ORIG...
05/14/96	NM	Hobbs	Lea County	6/2984	LOC/DME BC RWY 21, AMDT 5...
05/14/96	NV	Las Vegas	McCarran Intl	6/2967	ILS RWY 25R AMDT 16...
05/16/96	WI	Cable	Cable Union	6/3015	NDB OR GPS–B AMDT 9A...

[FR Doc. 96–13035 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28585; Amdt. No. 1731]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 2, 1982.

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

For Examination

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

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

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

For Purchase

Individual SIAP copies may be obtained from:

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

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

By Subscription

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 20, 1995*

Bartow, FL, Bartow Muni, VOR/DME or GPS RWY 9L, Amdt 1A Cancelled
Bartow, FL, Bartow Muni, VOR/DME RWY 9L, Amdt 1A
Blanding, UT, Blanding Muni, NDB or GPS RWY 35, Amdt 7 Cancelled
Blanding, UT, Blanding Muni, NDB RWY 35, Amdt 7

[FR Doc. 96–13033 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tolazoline Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Lloyd, Inc. The NADA provides for intravenous use of tolazoline hydrochloride injection in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Lloyd, Inc., 604 W. Thomas Ave., Shenandoah, IA 51601, filed NADA 140–994, which provides for intravenous use of Tolazine™ Injection (each milliliter contains tolazoline hydrochloride equivalent to 100 milligrams of base activity) in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine. The drug is limited to use on or by the order of a licensed veterinarian. The NADA is approved as of April 19, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.2474 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for a 5-year period of marketing exclusivity beginning April 19, 1996, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2474 is added to read as follows:

§ 522.2474 Tolazoline hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains tolazoline hydrochloride equivalent to 100 milligrams of base activity.

(b) *Sponsor.* See No. 061690 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used as follows:

(1) *Horses—(i) Amount.* Administer slowly by intravenous injection 4 milligrams per kilogram of body weight or 1.8 milligrams per pound (4 milliliters per 100 kilograms or 4 milliliters per 220 pounds).

(ii) *Indications for use.* For use in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine.

(iii) *Limitations.* The safety of Tolazine™ has not been established in pregnant mares, lactating mares, horses intended for breeding, foals, or horses with metabolically unstable conditions. The safety of Tolazine™ has not been evaluated for reversing xylazine used as a preanesthetic to a general anesthetic. This drug is for use in horses only and not for use in food-producing animals. Users with cardiovascular disease (for example, hypertension or ischemic heart disease) should take special precautions to avoid accidental exposure to this product.
Accidental spillage on the skin should be washed off immediately with soap and water. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: May 15, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–12876 Filed 5–22–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Subsistence Taking of Fish and Wildlife Regulations; Extension

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Final rule; extension of effective date.

SUMMARY: This rule amends the Subsistence Management Regulations for Public Lands in Alaska implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980 by extending the effective date of 50 CFR 100.25 and 36 CFR 242.25 (Subsistence taking of wildlife) (60 FR 31542). The regulations, now set to expire on June 30, 1996, are extended through July 31, 1996, to ensure continuity of the subsistence hunting and fishing seasons until the 1996–1997 season regulations can be issued in final form.

EFFECTIVE DATE: Effective June 30, 1996, the effective date of 50 CFR 100.25 and 36 CFR 242.25 (Subsistence taking of wildlife) which were added at 60 FR 31553 is extended from July 1, 1996, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3864. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Manager, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the Federal Register (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

On June 15, 1995, the 1995–1996 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska ware published in the Federal Register (60 FR 31542–31594). Those regulations included the section on the taking of wildlife, scheduled to expire June 30, 1996.

The Federal Subsistence Management Program initiates a process each fall with a proposed rule (60 FR 42085–42130) to provide the public with an opportunity to propose changes to the subsistence regulations. The proposals that are received are reviewed by the public and analyzed by a regional team, staff anthropologists, and biologists. The

Regional Councils then meet in public forum and develop recommendations to the Federal Subsistence Board on each proposal. Because of the Federal furloughs occurring in November and later in December and January, the public review process and the proposal analysis process were delayed. This consequently resulted in scheduling delays for the Regional Council meetings and the Federal Subsistence Board meeting. As a result, implementation of the 1996–1997 Subsistence Management Regulations for Public Lands in Alaska will be delayed until August 1, 1996.

This rule effectively extends the existing regulations through July 31, 1996.

The Board finds that public notice and comment requirements under the Administrative Procedures Act (APA) for this extension are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control after July 1 could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this extension.

The Board also finds good cause for the existing rule to be extended through July 31, 1996. This July 31 date is consistent with the anticipated Regional Council and Board actions to implement the 1996–1997 Federal Subsistence Management Regulations for Public Lands in Alaska scheduled for August 1, 1996. The Board therefore finds good cause under 5 U.S.C. 553(d)(3) to make this extension effective upon publication.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0075, with the expiration date of July 31, 1996.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the correcting amendments is less than 50, yielding a total annual reporting and recordkeeping burden of 13 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number

of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

As of the 1990 census there are 163,000 rural Alaskans qualified to participate in subsistence hunting or fishing. Although some of the subsistence users may conduct their activities on State or private lands, it is likely that a large portion of the 163,000 rural Alaskans utilize Federal lands to some extent.

These regulations do not meet the threshold criteria of ''Federalism Effects'' as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Effective June 30, 1996, the effective date for 36 CFR 242.25 and 50 CFR 100.25 which were added at 60 FR 31553 is extended from July 1, 1996 through July 31, 1996.

Dated: April 3, 1996.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: April 15 1996.

John C. Capp,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 96–12833 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M and 4310–55–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH44

Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule with minor, nonsubstantive changes an interim rule amending Department of Veterans Affairs (VA) adjudication regulations concerning compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. Before the interim rule, to establish entitlement to compensation for adverse results of medical or surgical treatment, the regulations required that VA be at fault or that an accident occur. In order to conform the regulations to a recent United States Supreme Court decision, the interim rule deleted the fault-or-accident requirement and instead provided that compensation is not payable for the necessary consequences of proper treatment to which the veteran consented.

EFFECTIVE DATE: This final rule is effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1151 provides for the payment of disability or dependency and indemnity compensation for additional disability or death resulting from an injury or aggravation of an injury suffered as the result of VA hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation under 38 U.S.C. ch. 31. VA had long interpreted the statute to require a showing of fault on the part of VA or the occurrence of an accident to establish entitlement to § 1151 compensation for adverse consequences of VA medical treatment. This interpretation was codified at 38 CFR 3.358(c)(3).

In a recent decision, *Brown* v. *Gardner*, 115 S. Ct. 552 (1994), upholding a lower court decision, the U.S. Supreme Court held that the fault-or-accident requirement in former 38 CFR 3.358(c)(3) was inconsistent with the plain language of 38 U.S.C. 1151 and that no fault requirement was implicit in the statute. The Supreme Court determined that the statutory language simply requires a causal connection between an injury or aggravation of an injury and VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation, but that compensation is not payable for the necessary consequences of treatment to which a veteran consented.

In the Federal Register of March 16, 1995 (60 FR 14222), VA published an interim rule amending 38 CFR 3.358(c) in order to implement 38 U.S.C. 1151 as interpreted in that decision of the Supreme Court. Interested persons were invited to submit written comments on or before May 15, 1995. We received comments from the Paralyzed Veterans of America and from a concerned individual.

One commenter, observing that VA may provide disability examinations for beneficiaries of the British Imperial and Canadian governments and for pensioners of other nations allied with the U.S. during World War I and World War II, and that VA may conduct examinations for other Federal agencies (e.g., Office of Personnel Management, Railroad Retirement Board), asked whether VA intends to cover under 38 U.S.C. 1151 those examinees. Since the plain language of 38 U.S.C. 1151 provides for payment of benefits only for a veteran, VA has no authority to award § 1151 benefits for anyone who is not a veteran.

The same commenter suggested substituting the term ''veteran'' for the

terms ''beneficiary'' and ''claimant'' in 38 CFR 3.358 (b)(1) and (c)(5) respectively if VA's intention was to restrict payment of compensation under 38 U.S.C. 1151 for veterans only. Since the statute authorizes the payment of benefits only for veterans, we have made the suggested changes. These changes are not substantive; they merely conform the regulation's terms to the statute's terms.

One commenter stated that because VA changed the regulation as a result of the Supreme Court's decision in *Brown* v. *Gardner*, which he contends found that the relevant portions of VA's prior regulations were void *ab initio*, the effective date of the regulatory change should be the date the legislation now codified as 38 U.S.C. 1151 was originally enacted rather than November 25, 1991, the date of the Court of Veterans Appeals decision that invalidated former § 3.358(c)(3).

We make no change in the effective date of the interim rule based on this comment. In our opinion, choosing November 25, 1991, as the effective date is rational. Furthermore, it is consistent with VA policies concerning the finality of decided claims and the application of court decisions invalidating VA regulations or statutory interpretations.

VA's General Counsel, in a precedent opinion issued March 25, 1994 (VAOPGCPREC 9–94) (*see* 59 FR 27307, May 26, 1994), held that decisions of the Court of Veterans Appeals invalidating VA regulations or statutory interpretations do not have retroactive effect in relation to prior finally adjudicated claims, but should be given retroactive effect as they relate to claims still open on direct review. In reaching this conclusion, the General Counsel quoted the following passage from the U.S. Supreme Court's opinion in *Harper* v. *Virginia Dept. of Taxation*, 113 S. Ct. 2510 (1993):

> When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.

Id. at 2517. That General Counsel precedent opinion is binding on VA and requires that VA apply the courts' interpretation of 38 U.S.C. 1151 to claims still open on direct review on November 25, 1991, the date of the Court of Veterans Appeals decision, but not to prior finally adjudicated claims.

By being effective from the date of the Court of Veterans Appeals decision invalidating former § 3.358(c)(3), the new rule will be applied just as VAOPGCPREC 9–94 requires the court decision to be applied. With an effective date of November 25, 1991, the new rule will apply to all claims still open on direct review on that date, whether by an agency of original jurisdiction or the Board of Veterans' Appeals. Moreover, the effective date of any award based on the new rule's application to such a claim will be in accordance with 38 U.S.C. 5110. However, the new rule will not retroactively apply to claims already finally decided as of November 25, 1991. Although those claims can be reopened with new and material evidence or administratively reviewed under the liberalized provisions of the new rule, no award based on the new rule's application to such a claim will be effective before that date.

In the absence of new and material evidence to reopen a claim or another reason to reconsider a Board of Veterans' Appeals decision, a finally decided claim remains final unless it involved clear and unmistakable or obvious error. By being effective from November 25, 1991, the new rule will also be consistent with this policy of finality. Claims pending on that date will receive the benefit of the new, more liberal interpretation of 38 U.S.C. 1151. Claims finally decided by that date, although decided under the old, subsequently invalidated rule, in the absence of new and material evidence to reopen or another reason to reconsider, will remain final unless they involved clear and unmistakable or obvious error. Moreover, we do not consider the application of the old rule before November 25, 1991, to have been clear and unmistakable or obvious error. *See* 38 CFR 3.105; VAOPGCPREC 25–95 (December 6, 1995).

The same commenter also objected to using 38 U.S.C. 1151 as the authority citation for paragraph (c)(6). In addition to containing information relating to 38 U.S.C. 1151, this paragraph contains information relating to 38 U.S.C. 1720 (non-VA nursing home care). Therefore, we are changing the authority citation to include both 38 U.S.C. 1151 and 1720.

Before the interim rule, 38 CFR 3.358(c)(4) provided that compensation would be payable for disability resulting from transportation while in a hospitalized status only if injury or death proximately resulted from VA's fault. The interim rule removed former paragraph (c)(4). A commenter suggests adding language to 38 CFR 3.358(a) expressly providing for 38 U.S.C. 1151 coverage where additional disability results from transportation while in a hospitalized status.

As was true before the courts invalidated VA's former interpretation of 38 U.S.C. 1151, claims based on additional disability or death resulting from an injury suffered as a result of transportation while in a hospitalized status are held to the same standard as claims based on additional disability or death resulting from an injury otherwise suffered as a result of hospitalization. Former paragraph (c)(4) was added to the regulation because of a decision of the Administrator of Veterans' Affairs holding that injuries suffered while being transported in a hospitalized status could give rise to eligibility under the predecessor provisions of 38 U.S.C. 1151. Transportation while hospitalized can still give rise to eligibility even though the old fault-or-accident standard is no longer valid. However, since the rule's general term ''hospitalization'' encompasses the particular circumstances of transportation while in a hospitalized status, we see no need to specify a provision for transportation while in a hospitalized status.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 7, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR Part 3, which was published at 60 FR 14222 on March 16, 1995, is adopted as a final rule with the following changes:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (b)(1) introductory text is amended by removing ''beneficiary's'' and adding, in its place, ''veteran's''; paragraph (c)(4) is amended by removing ''claimant's'' and ''claimants'' and adding, in their respective places, ''veteran's'' and ''veterans''; and an authority citation is added immediately following paragraph (c)(6) to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(Authority: 38 U.S.C. 1151, 1720.)

[FR Doc. 96–12924 Filed 5–22–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–80–1–9619a & 81–1–9620a; FRL–5505–4]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 29, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions include the adoption of new air quality rules and amendments to existing air quality rules that were the subject of public hearings held on May 16, 1995. A second submittal concerning these revisions was forwarded to EPA on December 28, 1995. This second submittal was the subject of a public hearing on September 26, 1995.

These revisions adopt three source-specific volatile organic compound rules; Thread Bonding Manufacturing, Glass Christmas Ornament Manufacturing, Commercial Bakeries, delete textile coating, Christmas ornament manufacturing, and bakeries from the list of sources that must follow interim standards, define di-acetone alcohol as a non-photochemically reactive solvent, and place statutory requirements for adoption by reference for referenced ASTM methods into a single rule rather than each individual rule that references ASTM methods.

DATES: This action is effective July 22, 1996 unless notice is received by June 24, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to:

Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ex 4212.

SUPPLEMENTARY INFORMATION: On November 29, and December 28, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions were approved into the North Carolina State Implementation Plan (SIP) in a previous document (61 FR 3588) and have been adopted by the Forsyth County Board of Commissioners. These revisions affect several sections in the ozone regulations. EPA is approving the revisions to sections Subchapter 3D .0104 Incorporation by Reference, .0501 Compliance With Emission Control Standards, .0516 Sulfur Dioxide Emissions From Combustion Sources, .0518 Miscellaneous Volatile Organic Compound Emissions, .0530 Prevention of Significant Deterioration, .0531 Sources in Nonattainment Areas, .0902 Applicability, .0907 Compliance Schedules for Sources in Nonattainment Areas, .0909 Compliance Schedules for Sources in New Nonattainment Areas, .0910 Alternative Compliance Schedules, .0911 Exception from Compliance Schedules, .0950 Interim Standards for Certain Source Categories, .0952 Petition for Alternative Controls, .0954 Stage II Vapor Recovery, .0955 Thread Bonding Manufacturing, .0956 Glass Christmas Ornament Manufacturing, and .0957 Commercial Bakeries because these revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

EPA is approving the following new rules and revisions of existing rules in the Forsyth County LIP. These new rules and revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

.0104, Incorporation by Reference

These amendments involve the placement of statutory requirements for adoption by reference for referenced American Society for Testing and Materials methods (ASTM) into a single rule rather than each individual rule that references ASTM methods.

.0501 Compliance With Emission Control Standards

This rule was amended to clarify the appropriate compliance methodology.

.0516 Sulfur Dioxide Emissions From Combustion Sources

This rule was amended to include an additional reference rule number.

.0518 Miscellaneous Volatile Organic Compounds Emissions

This rule was amended to clarify that diacetone alcohol and perchloroethylene are not considered to be photochemically reactive and to delete a repeated phrase.

.0530 Prevention of Significant Deterioration

This rule was amended to update the latest date of amendment of the CFR references.

.0531 Sources in Nonattainment Areas

This rule has been amended to add paragraph (k), which requires using the UAM model, by new or major modifications, at sources to predict effect on the ozone level and attainment status.

.0902 Applicability

Forsyth County did not adopt paragraph (e), which pertains to other counties in North Carolina, of the State rule because those areas are not in Forsyth County's jurisdiction.

.0909 Compliance Schedules for Sources in New Attainment Areas

This rule has been amended to correctly identify the appropriate paragraph references.

.0950 Interim Standards for Certain Source Categories

This section, is being revised to delete textile coating, bakeries and Christmas ornament manufacturing from the list of

sources that are required to follow the interim standards. The sources removed have had permanent rules adopted and are now subject to those requirements. The final revision in this section adds a sentence that defines di-acetone alcohol and perchloroethylene as a non-photochemically reactive solvent for these interim standards.

The permanent rules adopted were *SUBCHAPTER 3D .0955 THREAD BONDING MANUFACTURING, .0956 GLASS CHRISTMAS ORNAMENT MANUFACTURING,* and *.0957 COMMERCIAL BAKERIES.* These sections adopted rules to reduce the emission level by requiring at least a 95% reduction by weight and/or by installing a thermal incinerator with a temperature of at least 1600 F and a residence time of at least 0.75 seconds.

In addition to the above revisions EPA is approving a revision applicable to the following Sections: Subchapter 3D .0907, .0910, .0911, .0952, and .0954. This revision is an adjustment of the final compliance dates for VOC's from May 15, 1995 to May 15, 1997.

The submitted revisions also included amendments to Subchapter 3D .1401–.1415; Reasonably Available Control Technology for Sources of Nitrogen Oxides (Nox RACT); .1501–.1504 Transportation Conformity; and .1601–.1603; General Conformity. These revisions are being addressed in separate Federal Register documents.

Final Action

In this document, EPA is approving the revisions to the Forsyth County regulations listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on July 22, 1996. However, if notice is received by June 24, 1996 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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 the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: March 21, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(90) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(90) The VOC regulations and other miscellaneous revisions to the Forsyth County Local Implementation Plan which were submitted on December 28, 1995, and November 29, 1995.

(i) Incorporation by reference.

(A) Amendments to Forsyth County regulations Subchapter 3D .0104(a), .0531 (e)–(k), .0902 (a)–(h), .0907 (a)–(c), .0909 (a, c, d, e, and g), .0910 (a)–(d), .0911, .0950 (a and b), .0952 (a)–(c) and .0954 (f, h, k) adopted into the Air Quality Control Technical Code on November 13, 1995.

(B) Amendments to Forsyth County regulations Subchapter 3D .0501 (a)–(h), .0516 (a and b), .0518 (a)–(g), and .0530 (a)–(s), adopted into the Air Quality Control Technical Code on August 14, 1995.

(C) Subchapter 3D .0955, .0956, and .0957 adopted into the Air Quality Control Technical Code on August 14, 1995.

(ii) Other material. None.

[FR Doc. 96–12890 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA48–7121a; FRL–5506–3]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, the Energy Facility Site Evaluation Council Regulations (EFSEC) as revisions to the Washington State Implementation Plan (SIP). These revisions were submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on November 29, 1995 and in accordance with the requirements of Title I Section 110 and part D of the Clean Air Act (hereinafter referred to as the Act). EPA is taking no action on a number of the submitted provisions which are unrelated to the purposes of the implementation plan.

DATES: This action is effective on July 22, 1996 unless adverse or critical comments are received by June 24, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101; and, the State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Ed Jones, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1743.

SUPPLEMENTARY INFORMATION

I. Background

The Energy Facility Site Evaluation Council (EFSEC) amended Chapter 463–39 of the Washington Administrative Code (WAC) on September 21, 1995. The Washington Department of Ecology (WDOE), on behalf of the Governor, submitted the amended regulations to EPA on November 29, 1995 as a revision to the Washington SIP. The amended regulations pertain to General and Operating Permit Regulations for Air Pollution Sources administered by EFSEC, and adopt by reference various other state regulations. Some of the regulations adopted by reference have been the subject of previous EPA actions on the SIP.

II. This Action

The state of Washington's November 29, 1995 request for SIP revision included fifteen regulations contained in Chapter 463–39 of the WAC. Certain of these regulations are amendments to those currently contained in the SIP; others are entirely new additions. As part of the submittal the state also requested that particular outdated WAC 463–39 regulations, currently in the approved SIP, be removed.

A. *Unchanged.* EPA approves two Chapter 463–39 regulations currently in the SIP, and unchanged by the November 29, 1995 revisions. These are WAC 463–39–135 and –170.

B. *Modifications.* EPA approves, with minor exception, the modification of five amended Chapter 463–39 regulations currently in the SIP. These are: WAC 463–39–010, –020, –030, –100, and –120. The language in three of these regulations—WAC 463–39–010 ''Purpose,'' 463–39–020 ''Applicability,'' and 463–39–100 ''Registration''—has been modified only slightly over that used in versions currently in the SIP.

WAC 463–39–030 ''Additional Definitions'' has been modified to eliminate the listing of specific terms and their regulatory meanings. The modified regulation is brief and states that in addition to the definitions provided in WAC 173–400–030, 173–401–200, and 173–406–101, ''ecology'' and ''authority'' shall be synonymous with EFSEC. WAC 173–400–030 has been previously approved for inclusion in the SIP, and EPA approves the use of these definitions for the purposes of defining terms in Chapter 463–39.

WAC 463–39–120 ''Monitoring and Special Report'' modifies language contained in the regulation so that: (a) Ecology may authorize a designee for operating its surveillance program; (b) the surveillance program must be in accord with Chapter 173–400 regulations; and, (c) subparts 2–7 of the previous regulation (concerning ''investigation of conditions'', ''source testing'', etc.) are removed. Although these six subparts are removed, however, they are substantively found in WAC 173–400–105 and –107, both of which are contained in the approved SIP, and adopted by reference in 463–39–005.

In approving the modifications noted above, it must be noted that reference to Chapter 173–401 is made in four of the amended regulations: WAC 463–39–020, –030, –100, and –120. Chapter 173–401 concerns Title V ''Operating Permit Regulation'' and regulations in this Chapter have not been included in the SIP. In addition, reference is made to: Chapter 173–406 ''Acid Rain Regulation'' in WAC 463–39–020, –030, and –120; and, Chapter 173–460 ''Controls for New Sources of Toxic Air Pollutants'' in WAC 463–39–020 and –120. These regulations are also not a part of the approved SIP. As a consequence, EPA is not taking action on the particular Chapter 173–401, 173–406, and 173–460 references embodied within the four regulations noted.

C. *Additions.* The state of Washington has requested that eight new Chapter 463–39 regulations be added to the SIP. These are: WAC 463–39–005, –070, –090, –095, –105, –115, –140, and –230.

New regulation WAC 463–39–005 ''Adoption by Reference'' adopts twenty-four of the state's Chapter 173–400 regulations. On June 2, 1995 EPA approved, disapproved, and took no action on various state regulations contained in Chapter 173–400, submitted by the state for the purpose of inclusion in the implementation plan (60 FR 28726). The rationale for EPA's decisions on these regulations is described in the February 22, 1995 Federal Register (60 FR 9802) proposing the rulemaking. Of the twenty-four Chapter 173–400 regulations referenced in WAC 463–39–005, thirteen are presently contained, in whole, in the approved SIP. These are: WAC 173–400–030 ''Definitions,'' –060 ''Emission Standards for General Process Units,''

–081 ''Startup and Shutdown,'' –091 ''Voluntary Limits on Emissions,'' –105 ''Records, Monitoring, and Reporting,'' –107 ''Excess Emissions,'' –110 New Source Review,'' –151 ''Retrofit Requirements for Visibility Protection,'' –161 Compliance Schedules,'' –171 ''Public Involvement,'' –190 ''Requirements for Nonattainment Areas,'' –200 ''Creditable Stack Height and Dispersion Techniques,'' and –205 ''Adjustment for Atmospheric Conditions.'' Four others are contained in the SIP, but are qualified with exceptions (i.e., not all parts of the regulations are included within the implementation plan). These are: WAC 173–400–040, –050, –112, and –113. Five of the adopted 173–400 regulations are regulations disapproved from SIP inclusion in EPA's June 2, 1995 action. These are: WAC 173–400–120 ''Bubble Rules,'' –131 ''Issuance of Emission Reduction Credits,'' –136 ''Use of Emission Reduction Credits,'' –141 ''Prevention of Significant Deterioration,'' and –180 ''Variance.'' Of the remainder, one regulation (WAC 173–400–114 ''Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source'') was not previously submitted by the state for inclusion into the SIP, and the other (WAC 173–400–075 ''Emission Standards for Sources Emitting Hazardous Air Pollutants''), though submitted, was not acted upon by EPA.

As noted above, four state regulations were previously only partially approved for inclusion into the SIP. Portions of WAC 173–400–040 ''General Standards for Maximum Emissions,'' adopted by reference in 463–39–005 to replace WAC 463–390–040, were excluded from the SIP. Specifically, provisions (1)(c) and (1)(d), exceptions to meeting the opacity standard; provision (2), regarding fallout of PM; provision (4), regarding odor generation; and, the second paragraph of provision (6), regarding SO2, were all excluded. Similarly, WAC 463–39–050 ''Minimum Emission Standards for Combustion and Incineration Sources'' was replaced by reference to WAC 173–400–050 ''Emission Standards for Combustion and Incineration Sources'' (again, adopted in 463–39 005). The exception to the use of the oxygen correction factor in 173–400–050(3), however, was excluded from the SIP. Finally, section (8) of WAC 173–400–112 ''Requirements for New Sources in Nonattainment Areas'' and section (5) of 173–400–113 ''Requirements for New Sources in Attainment or Unclassifiable Areas'' were also not approved by EPA for inclusion in the SIP.

In approving WAC 463–39–005, therefore, EPA notes the same exceptions noted in the previous rulemaking. That is, only those Chapter 173–400 regulations and portions of regulations, approved in earlier EPA actions which are adopted by reference within WAC 463–39–005, are hereby approved for the purposes of the implementation plan. As a consequence, WAC 173–400–075, –114, –120, –131, –136, –141, and –180 are disapproved, and 173–400–040, –050, –112, and –113 are only approved in part.

Besides referencing Chapter 173–400, regulation WAC 463–39–005 also adopts numerous Chapter 173–401, 173–406, and 173–460 regulations. As previously explained, none of these regulations is currently in the implementation plan. Since EPA has taken no action on these provisions, corresponding paragraphs (2), (3), and (4) of WAC 463–39–005 are not approved for inclusion in the implementation plan.

EPA approves with exception WAC 463–39–095 ''Permit Issuance.'' This provision requires that permits be attached to site certification agreements, and that permits become effective upon the governor's approval and upon execution of the site certification agreement. In approving WAC 463–39–095 EPA excepts those references to WAC regulations not contained in the SIP. Specifically, WAC 463–39–095 refers to Permits issued in accord with Chapters 173–401, 173–406, and 173–460; EPA is not taking action on these particular references.

EPA also approves WAC 463–39–230 ''Regulatory Actions'' into the SIP. This regulation, though new, modifies and expands upon language contained in WAC 463–39–130 (which has subsequently been repealed), previously approved for inclusion in the SIP.

EPA is taking no action on new regulation WAC 463–39–070 ''Radioactive Emissions.'' This provision is not related to the criteria pollutants regulated under the SIP.

EPA is taking no action on new regulation WAC 463–39–105 ''Fees.'' The regulation asserts that fees shall be assessed to recover various operating-permit program costs. Since the focus of the provision is on Title V programs, its requirements are unrelated to the SIP.

EPA is also taking no action on WAC 463–39–090 ''Permit Application Form'' and –140 ''Appeals Procedure.'' The substantive requirements of both of these regulations depend on references to other state regulations which have not been included in the SIP. WAC 463–39–090 refers to Chapters 173–401 and 173–406; WAC 463–39–140 refers to WAC 463–54–070.

Finally, EPA is taking no action on WAC 463–39–115 ''Standards of Performance for New Stationary Sources.'' This provision implements provisions of section 111 of the Act and is unrelated to the SIP.

D. *Deletions.* EPA approves the deletion of seven repealed Chapter 463–39 regulations currently in the SIP. These are: WAC 463–39–040, –050, –060, –080, –110, –130, and –150. Five of these regulations have been replaced by similar Chapter 173–400 regulations, adopted by reference in WAC 463–39–005, and approved (at least in part) for inclusion into the SIP. Specifically, WAC 463–39–040 ''General Standards for Maximum Permissable Emissions'' has been superceded by WAC 173–400–040 ''General Standards for Maximum Emissions,'' WAC 463–39–050 ''Maximum Emission Standards for Combustion and Incineration Sources'' by WAC 173–400–050 ''Emission Standards for Combustion and Incineration Units,'' WAC 463–39–060 ''Maximum Emission Standards for General Process Sources'' by WAC 173–400–060 ''Emission Standards for General Process Units,'' WAC 463–39–080 ''Compliance Schedules'' by WAC 173–400–161 of the same name, and WAC 463–39–110 ''New Source Review'' by WAC 173–400–110 of the same name.

WAC 463–39–150 ''Variance'' has been replaced by reference to WAC 173–400–180 (of the same name), but the latter was previously disapproved for inclusion into the SIP in EPA's June 2, 1995 action (60 FR 28726). WAC 463–39–130 ''Regulatory Actions,'' as noted above, has been replaced by WAC 463–39–230 of the same name.

In summary, then, EPA approves without exception the inclusion of the following Chapter 463–39 regulations into the SIP: amended –010, new –230, –135, and –170. The latter two regulations have been approved previously, have not been modified, and will remain in the implementation plan. EPA approves the inclusion of new WAC 463–39–005(1) with the exception of those Chapter 173–400 regulations, or portions of regulations, adopted by reference in -005(1) which themselves are not contained in the SIP. EPA also approves the inclusion of amended WAC 463–39–020, amended -030, new -095, amended -100, and amended -120 with the exception of requirements within those six regulations which refer to other Chapter 173 or 463 state regulations not contained in the SIP.

Certain repealed Chapter 463–39 regulations will, as part of this action,

be removed from the SIP. These are: WAC 463–39–040, -050, -060, -080, –110, –130, and –150. EPA is taking no action on new WAC 463–39–005(2)-(4), new -070, new -090, new –105, –115, and new –140.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 22, 1996 unless, by June 24, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 22, 1996.

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 July 22, 1996. 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 6, 1996.

Jane S. Moore,

Acting Regional Administrator.

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

PART 52— [AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(60) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(60) On November 29, 1995 the Director of WDOE submitted to the Regional Administrator of EPA the Energy Facility Site Evaluation Council Regulations (EFSEC) as a revision to the Washington State Implementation Plan (SIP).

(i) Incorporation by reference.

(A) The November 29, 1995 letter from WDOE to EPA submitting requests for revisions to the Washington SIP to include the Energy Facility Site Evaluation Council Regulations; EFSEC Regulation Chapter 463–39 Washington Administrative Code General and Operating Permit Regulations for Air Pollution Sources, (excluding the following sections: 005 (2) through (4); –070; –090; –105; –115; –140; those portions of –005(1), –020, –030, –095, –100, and –120 containing any reference to regulations or provisions of regulations in Chapters 173–400, 173–

401, 173–406, 173–460, or 463–58a) adopted on November 16, 1995.

[FR Doc. 96–12892 Filed 5–22–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5508–3]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revisions consist of the provisions contained in certain rules promulgated between February 21, 1991, and September 30, 1992, which fall within RCRA Clusters I–III. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revisions is available for public review and comment.

DATES: Final authorization for Tennessee's program revisions shall be effective July 22, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–3555 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 8, 1985. Tennessee has received authorization for revisions to its program on August 11, 1987, October 1, 1991, November 6, 1991, July 31, 1992, and July 7, 1995. On December 5, 1994, Tennessee submitted a program revision application for additional approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Tennessee's program revisions shall become effective July 22, 1996, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated on February 21, 1991, through September 30, 1992.

Checklist	Federal requirement	FR Reference	FR Promulgation date	State authority
85	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	56 FR 7134	2/21/91	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a), (d)(1), (3)&(4); TRC 1200–1–11–.01(2)(a)&(b)1; .02(1)(b); .02(1)(d)1(x); .02(1)(d)3(ii)(I–IV); .02(1)(f); .06(7)(a); .06(15)(a); .05(7)(a); .05(15)(a); .09(1)(a); .07(5)(b); .07(9)(c)5; .07(10)(a); .07(1)(j); .07(3)(a).

Checklist	Federal requirement	FR Reference	FR Promulgation date	State authority
94	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I.	56 FR 32688	7/17/91	TCA 68–212–107(a),(d)(3,4,&6); TRC 1200–1–11–.02(1)(c)3(ii)(II)II; .02(1)(f)1; .05(16)(a)1; .11(1)(a); .09(8)(a)1; .09(9)(a)1; .07(5)(b)12; .07(9)(c)5; .07(1)(j)1; .07(3)(a)1.
96	Burning of Hazardous Waste in Boilers and Industrial Furnaces, Technical Amendments II.	56 FR 42504	8/27/91	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a)(d)(3,4,&6); TRC 1200–1–11–.02(1)(b)1; .05(7)(a)1; .09(8)(a)1; .09(9)(a)1.
98	Coke Ovens Administrative Stay.	56 FR 43874	9/5/91	TCA 68–212–104(7&15); TCA 68–212–106(a)(1); TCA 68–212–107(a)(d)(1,3,4,&6); TRC 1200–1–11–.09(8)(a)1.
111	Boilers and Industrial Furnaces; Technical Amendment III.	57 FR 38558	8/25/92	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a) & (d)(1)–(3); TCA 68–211–105(c); TCA 68–211–106(a)(1)&(2); TCA 68–211–107(a); TCA 68–211–111(d); TCA 68–211–1001 *et.seq.*; TCA 68–212–111(d); TRC 1200–1–11–.01(2)(a); .01(3)(a)1; .02(1)(b); .06(1)(b)2(ii–iii); .09(1)(a).
114	Boilers and Industrial Furnaces; Technical Amendment IV.	57 FR 44999	9/30/92	TCA 68–211–105(c); TCA 68–211–106(a)(1)&(2); TCA 68–211–107(a); TCA 68–211–111(d); TCA 68–211–1001 *et.seq.*; TCA 68–211–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a), (d)(1) & (d)(3); TRC 1200–1–11–.09(1)(a).

C. Decision

I conclude that Tennessee's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally has a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's

program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12864 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5508–4]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revisions consist of the provisions contained in rules promulgated between November 8, 1984, and June 30, 1987, otherwise known as HSWA Cluster I. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revisions are available for public review and comment.

DATES: Final authorization for Tennessee's program revisions shall be effective July 22, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 5, 1985. Tennessee has received authorization for revisions to its program on August 11, 1987, October 1, 1991, July 31, 1992, and October 23, 1995. On August 14, 1995, Tennessee submitted a program revision application for additional program approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the ''Addresses'' section of this notice.

Approval of Tennessee's program revisions shall become effective July 22, 1996, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated on November 8, 1984–June 30, 1987.

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
14	Dioxin Waste Listing and Management Standards.	50 FR 1978	1/14/85	TCA 68–212–106(a)(1); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(e) & (g); .02(4)(a); .02(5)(a); .06(9)(a); .06(10)(a); .06(11)(a); .06(12)(a); .06(13)(a); .06(14)(a); .06(15)(a); .05(1)(c)1(i); .05(15)(a)4; .05(16)(a)4; .07(5)(a)&(b).
16	Paint Filter Test	50 FR 18370	4/30/85	TCA 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.06(2)(a); .06(5)(a)1; .06(14)(a)1; .05(2)(a)1; .06(5)(a)1; .05(14)(a).
17A	Small Quantity Generators	50 FR 28702	7/15/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(1)(e).
17C	Household Waste	50 FR 28702	7/15/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(1)(d)(2)(i).
17D	Waste Minimization	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–107(d)(6); TRC 1200–1–11–.03(5)(b)1(iv)–(vi); .03(3)(a); .06(5)(a); .07(8)(a)10(ii); .07(3)(a).
17E	Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(9); TRC 1200–1–11–.06(2)(a)1.
17F	Liquids in Landfills	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); TRC 1200–1–11–.06(14)(a); .07(5)(b).
17G	Dust Suppression	50 FR 28702	7/15/85	TCA 68–212–106(a)(2); 68–212–106(a)(3); 68–212–107(d)(3); TRC 1200–1–11–.09(1)(a).
17H	Double Liners	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); TRC 1200–1–11–.06(11)(a); .06(14)(a); .05(11)(a); .05(12)(a); .05(14)(a).
17I	Ground-Water Monitoring	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–108(a)(2); TRC 1200–1–11–.06(6)(a); .06(11)(a); .06(12)(a); .06(14)(a)1.
17J	Cement Kilns	50 FR 28702	7/15/85	TCA 68–212–104(15); 68–212–105(2); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(f); .02(4)(a); .09(1)(a).
17K	Fuel Labeling	50 FR 28702	7/15/85	TCA 68–212–104(15); 68–212–105(2); 68–212–107(d)(3); TRC 1200–1–11–.09(1)(a).
17M	Pre-Construction Ban	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); TRC 1200–1–11–.07(2)(c)1; .07(2)(c)4.
17N	Permit Life	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); TRC 1200–1–11–.07(9)(c)3(xiii); .07(8)(c)4.
17O	Omnibus Provision	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–108(a)(1); TRC 1200–1–11–.07(8)(b).
17P	Interim Status	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–107(d)(9); 68–212–108(a)(1); TRC 1200–1–11–.07(2)(a)1–3; .07(2)(b)1; .07(2)(b)5; .07(8)(a)10(ii); .07(3)(a).
17Q	Research and Development Permits.	50 FR 28702	7/15/85	TCA 68–212–107(d)(3)&(4); 68–212–108(a)(1)&(b); TRC 1200–1–11–.07(2)(a)1; .07(1)(g).
17R	Hazardous Waste Exports	50 FR 28702	7/15/85	TCA 68–212–107(d)(5); TRC 1200–1–11–.03(6)(a)1.
17S	Exposure Information	50 FR 28702	7/15/85	TCA 68–212–107(d)(4); TRC 1200–1–11–.07(2)(a)3; .07(2)(f).
18	Listing of TDI, TDA, DNT	50 FR 42936	10/23/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a)1.
19	Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces.	50 FR 49164	11/29/85	TCA 68–212–106(a)(1); 68–212–107(d)(1); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(c)3(ii)(II)II; .02(1)(e); .02(1)(f); .06(15)(a); .05(15)(a)1.
20	Listing of Spent Solvents	50 FR 53315	12/31/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a).
21	Listing of EDB Waste	51 FR 5327	2/13/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a).
22	Listing of Four Spent Solvents	51 FR 6537	2/25/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a)
23	Generators of 100 to 1000 kg Hazardous Waste.	51 FR 10146	3/24/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(a); .02(1)(a); .02(1)(e); .02(4)(a); .03(3)(a); .03(4)(e)2,6–8; .03(5)(d); .04(3)(a); .07(1)(b)4(i); .07(2)(B)1(iii).
25	Codification Rule; Technical Correction.	51 FR 19176	5/28/86	TCA 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.05(14)(a).
30	Biennial Report; Correction	51 FR 28556	8/8/86	TCA 68–212–107(d)3,4,&6; 68–212–105(4); TRC 1200–1–11–.06(5)(b)7–9; .05(5)(a)5(vi)&(viii).
31	Exports of Hazardous Waste	51 FR 28664	8/8/86	TCA 68–212–107(d)5;

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
				TRC 1200–1–11–.02(1)(e)&(f); .03(5)(b)1; .03(5)(b)1(iii)(III)I–III; .03(5)(b)3; .03(6)(a)1; .03(7)(a)1; .03(1)(a)7; .03(3)(a); .04(3)(a).
32	Standards for Generators; Waste Minimization Certifications.	51 FR 35190	10/1/86	TCA 68–212–104(7)–(8); 68–212–106(a)(1)&(3); 68–212–107(d)(1)–(4)&(6); TRC 1200–1–11–.03(3)(a).
33	Listing of EBDC	51 FR 37725	10/24/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a).
34	Land Disposal Restrictions	51 FR 40572	11/7/86	TCA 68–212–106(a)(1); 68–212–107(d); TRC 1200–1–11–.01(1)(a)&(b); .01(2)(a); .01(3)(a)1; .02(1)(a); .02(1)(d)3(i); .02(1)(d)4(i); .02(1)(e)–(g); .02(3)(a); .02(4)(a); .03(1)(b); .04(1)(c); .06(1)(b)7; .06(2)(a); .06(5)(a); .05(1)(b)1; .05(2)(a)1; .05(5)(a)1; .10(1)(a)1–5; .10(2)(a); .10(3)(a); .10(3)(a)4; .10(4)(a); .10(5)(a); .07(5)(a)1; .07(8)(b); .07(9)(c)5.
SR2	Variance under § 3005(j) (2)–(9) and (13).	HSWA § 3005(j) (2)–(9)		TCA 68–212–104(7); 68–212–106(a)(1)&(2); 68–212–107(a); 68–212–107(d)(3)&(9); TRC 1200–1–11–.01(2)(a); .02(1)(c)1(ii)(III); .02(1)(c)3(ii)(II)III; .02(1)(c)6; .02(1)(c)6(i); .02(1)(c)6(ii); .03(4)(e)2(i)(III); .03(4)(e)2(i)(III)II; .03(4)(e)2(i)(IV); .03(4)(e)2(i)(IV)I; .03(4)(e)2(i)(IV)II; .03(4)(e)2(ii); .06(7)(a); .06(8)(a); .06(8)(c); .06(32)(a); .05(7)(a); .05(8)(a); .05(8)(c); .05(11)(a); .05(30)(a); .10(1)(a); .10(1)(a)4; .10(1)(a)5; .10(1)(a)9; .10(1)(b)2; .10(2)(a); .10(3)(a); .10(4)(a); .10(5)(a); .07(4)(a)15; .07(5)(a); .07(9)(c)5; .07(10)(a); .07(3)(a).
BB	Exceptions to the Burning and Blending of Hazardous Waste.	HSWA § 3004(q) (2)(A) § 3004(r) (2) & (3)		TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(a); .01(3)(a)1; .02(1)(b); .06(1)(b)2(ii); .05(1)(b)2(iii); .09(1)(a)
CP	Hazardous and Used Oil Fuel Criminal Penalties.	HSWA § 3006(h) § 3008(d) § 3014		TCA 68–212–106(a)(1); 68–212–107(d)(1)&(3).

C. Decision

I conclude that Tennessee's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally have a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such

flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12886 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5508–2]

Kentucky; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Kentucky's revisions consist of the provisions contained in certain rules promulgated between July 1, 1987, through June 30, 1992, which fall within HSWA Cluster II, Non-HSWA Cluster VI, and RCRA Clusters I and II. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revisions. Kentucky's application for program revisions is available for public review and comment.

DATES: Final authorization for Kentucky's program revisions shall be effective July 22, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours at the following addresses for inspection and copying: Kentucky Department for Environmental Protection, Division of Waste Management, Fort Boone Plaza, Building 2, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564–6716; U.S. EPA Region 4, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–3555 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Kentucky

Kentucky initially received final authorization for its base RCRA program effective on January 31, 1985. Kentucky has received authorization for revisions to its program on March 13, 1995, December 19, 1988, March 20, 1989, May 15, 1989, and November 30, 1992. In August 1994, Kentucky submitted a program revision application for additional program approvals. Today, Kentucky is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Kentucky's application and has made an immediate final decision that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Kentucky's application for these program revisions are available for inspection and copying at the locations indicated in the ''Addresses'' section of this notice.

Approval of Kentucky's program revisions shall become effective July 22, 1996, unless an adverse comment

pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Kentucky is today seeking authority to administer the following Federal requirements promulgated between July 1, 1987, and June 30, 1992.

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
42	Exception Reporting for Small Quantity Generators of Hazardous Waste.	9/23/87	52 FR 35894	KRS 224.46–570; 401 KAR 32:040§ 3(1)–(2).
44A	Permit Application Requirements Regarding Corrective Action.	12/1/87	52 FR 45788	KRS 224.46–520; 401 KAR 38:100§ 2–3.
44B	Corrective Action Beyond Facility Boundary.	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530(1)(e),(f),(h), (i),(2); 401 KAR 34:060§ 11(5)(a)–(b); 12(3).
44C	Corrective Action for Injection Wells.	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530(1)(e), (f), (h), (i), (2); 401 KAR 35:010; 401 KAR 38:060;§ 1(2)(c)1; 1(2)(c)2.
44D	Permit Modification	12/1/87	52 FR 45788	KRS 224.46–520(1)&(2); KRS 224.46–530(1)(g)&(2); 401 KAR 38:040§ 2(1)(c).
44E	Permit as a Shield Provision	12/1/87	52 FR 45788	KRS 224.46–520(1)&(2); KRS 224.46–530(1)(a)–(c); 401 KAR 38:010§ 3(1).
44F	Permit Conditions to Protect Human Health and the Environment.	12/1/87	52 FR 45788	KRS 224.46–305; KRS 224.46–520(1)(b)–(c), (2) & (4); KRS 224.46–530(1)(f),(h) & (2); 401 KAR 38:070§ 10.
44G	Post Closure Permits	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530; 401 KAR 38:010§ 1(2).
67	Testing and Monitoring Activities	9/29/89	54 FR 40260	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 30:010§ 3; 401 KAR 31:120§ 1(4).
68	Reportable Quantity Adjustment	10/6/89	54 FR 41402	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2), 2(2), 3(2), 4(2); 401 KAR 31:040§ 2(1), 3 & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
72	Modifications of F019 Listing	2/14/90	55 FR 5340	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2),4(2); 401 KAR 31:040§ 2(1), 3 & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
73	Testing and Monitoring Activities; Technical Corrections.	3/9/90	55 FR 8948	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 30:010§ 3; 401 KAR 30:120§ 1(4).
75	Listing of 1, 1-Dimethylhydrazine Production Wastes.	5/2/90	55 FR 18496	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2),4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
76	Criteria for Listing Toxic Wastes; Technical Amendment.	5/4/90	55 FR 18726	KRS 224.46–510(3); 401 KAR 31:020§ 2(1)(c).
77	HSWA Codification Rule; Double Liners; Correction.	5/9/90	55 FR 19262	KRS 224.46–520; KRS 224.46–530(1)(f), (h), & (i); 401 KAR 34:200§ 2(3); 401 KAR 34:230§ 2(4).
80	Toxicity Characteristic; Hydrocarbon Recovery Operations (HSWA).	10/5/90	55 FR 40834	KRS 224.46–510(3); 401 KAR 31:010§ 4(2)(k).
81	Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	11/2/90	55 FR 46354	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 31:040§ 2(2).
84	Toxicity Characteristic; Chlorofluorocarbon Refrigerants.	2/13/91	56 FR 5910	KRS 224.46–510(3); KRS 224.46–530(1)(n) & (2); 401 KAR 31:010§ 4(2)(1).
86	Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment.	2/25/91	56 FR 7567	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
88	Administrative Stay for K069 Listing.	5/1/91	56 FR 19951	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
89	Revision to F037 and F038 Listings.	5/13/91	56 FR 21955	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
97	Exports of Hazardous Waste; Technical Correction.	9/4/91	56 FR 43704	KRS 224.46–510(a), (d)–(g); 401 KAR 32:050§ 4(2), & 7(2).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
99	Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations.	12/23/91	56 FR 66365	KRS 224.46–520(1); KRS 224.46–530(1)(h)–(i) & 2; 401 KAR 35:060§ 2(1)(c).
104	Used Oil Filter Exclusion	5/20/92	57 FR 21524	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:010§ 4(2)(m).
105	Recycled Coke By-Product Exclusion.	6/22/92	57 FR 27880	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:010§ 4(1)(j).

C. Decision

I conclude that Kentucky's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised.

Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Kentucky's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally has a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12887 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–4

[FTR Amendment 48]

RIN 3090–AF88

Federal Travel Regulation; Privately Owned Vehicles Mileage Reimbursement

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rates for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned automobile from 30 cents to 31 cents per mile and the cost of a privately owned motorcycle from 24.5 cents to 25 cents per mile, and decrease the cost of operating a privately owned airplane from 88.5 cents to 85 cents per mile.

DATES: *Effective date:* This final rule is effective June 7, 1996.

Applicability date: The privately owned vehicle (POV) mileage reimbursement rates apply for official travel performed on or after June 7, 1996.

FOR FURTHER INFORMATION CONTACT: Vella Cloyd, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 301–4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–4 is amended as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 301–4.2 is amended by revising paragraph (a)(1) through (a)(3) to read as follows:

§ 301–4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(1) For use of a privately owned automobile: 31 cents per mile.

(2) For use of a privately owned airplane: 85 cents per mile

(3) For use of a privately owned motorcycle: 25 cents per mile.

* * * * *

Dated: April 30, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–12785 Filed 5–22–96; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7641]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism,

October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Texas: Angelina County, unincorporated areas	480007	Mar. 29, 1996	May 22, 1979.
Indiana: Jay County, unincorporated areas	180440	Apr. 9, 1996	Jan. 6, 1978.
Texas:			
Goliad County, unincorporated areas	480827	Apr. 19, 1996.	
Justin, city of, Denton County	480778	.....do	June 3, 1977.
North Dakota: Maddock, city of, Benson County	380004	.....do.	
Michigan: Middle Branch, township of, Osceola County	260952	Apr. 26, 1996.	
New Eligibles—Regular Program			
Ohio: Swanton, village of, Fulton and Lucas Counties	390632	Apr. 9, 1996	Feb. 15, 1984.
Arkansas: Bethel Heights, city of, Benton County	050386	Apr. 19, 1996	Aug. 16, 1995.
Texas:			
New Hope, town of, Collin County	480138	.....do	Jan. 19, 1996.
Weir, city of, Williamson County [1]	481674	.....do.	
Reinstatements			
Pennsylvania: Osborne, borough of, Allegheny County	420061	Feb. 16, 1973, Emerg; Nov. 15, 1979, Reg; Oct. 4, 1995, Susp; Apr. 12, 1996, Rein.	Oct. 4, 1995.
New York:			
Adams, town of, Jefferson County	360324	Sept. 1, 1978, Emerg; June 5, 1985, Reg; Nov. 4, 1992, Susp; Apr. 19, 1996, Rein.	June 5, 1985.
Wirt, town of, Allegany County	361597	Dec. 21, 1978, Emerg; June 25, 1982, Reg; Nov. 4, 1992, Susp; Apr. 19, 1996, Rein.	June 25, 1982.
New York:			
Stony Creek, town of, Warren County	360880	Dec. 29, 1980, Emerg; Aug. 24, 1984, Reg; Nov. 4, 1992, Susp; Apr. 26, 1996, Rein.	Aug. 24, 1984.
Lapeer, town of, Cortland County	361326	Nov. 4, 1976, Emerg; July 20, 1984, Reg; Nov. 4, 1992, Susp; Apr. 26, 1996, Rein.	July 20, 1984.
Regular Program Conversions			
Region III			
Delaware:			
Middletown, town of, New Castle County	100024	Apr. 17, 1996, Suspension Withdrawn	Apr. 17, 1996
New Castle, city of, New Castle County	100026	.....do	do.
New Castle County, unincorporated areas	105085	.....do	do.
Newark, city of, New Castle County	100025	.....do	do.
Newport, town of, New Castle County	100054	.....do	do.
Wilmington, city of, New Castle County	100028	.....do	do.
Region V			
Ohio:			
Fairfield County, unincorporated areas	390158	.....do	do.
Kenton, city of, Hardin County	390253	.....do	do.
Region VI			
Texas: Hardin County, unincorporated areas	480284	.....do	do.

[1] The City of Weir has adopted Williamson County's Flood Insurance Rate Map (FIRM) dated September 27, 1991 and Flood Insurance Study (FIS) for floodplain management and insurance purposes, (Panels 125 and 250; Williamson County's Community Identification Number is 481079).

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: May 16, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–13017 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 80

[CI Docket No. 95–54, 96–195]

Inspection of Great Lakes Agreement Ships

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has issued a *Report and Order* which adopts rules to require vessel operators on the Great Lakes subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by an FCC-licensed technicians holding an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate instead of by Commission staff. The Commission took this action to reduce economic burdens on the public and the Commission. The intended effect of these rule changes is increase the availability of competent, private sector inspectors to conduct Great Lakes Agreement inspections without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* CI Docket No. 95–54, FCC 96–195, adopted April 25, 1996, and released, April 26, 1996. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. In this *Report and Order,* we adopt rules that require owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate instead of by Commission staff. These changes will reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because the United States is required by the Great Lakes Agreement to fully guarantee the completeness and efficiency of the inspection, we are adopting rules to require two independent certifications that the ship has passed an inspection. One certification from the inspecting technician that the vessel has passed an inspection and another certification that the vessel owner, operator, or ship's master is satisfied that the inspection was satisfactory. We have also concluded that it is important to the integrity of this ship inspection program that the inspectors be independent of the vessel owners and operators. We are, therefore, providing that the vessel's owner, operator, master, employees or their affiliates may not conduct the required inspections.

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio. It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year. The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government. In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission.

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service. Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very busy period in the spring when these vessels are being put back in service.

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the output power, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that make up the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.

6. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public.

Final Regulatory Flexibility Analysis

7. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the rules adopted in this Report and Order.

8. Need for and purpose of this action. The rules we adopt in this proceeding will permit the owners and operators of Great Lakes Agreement vessels to arrange for an inspection by an FCC-licensed operator instead of requiring that all inspections be conducted by FCC personnel. This change will improve the speed and convenience of

service to the owners and operators of such vessels, many of which are small businesses and will conserve scarce government resources.

9. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

10. Significant alternatives considered. We proposed limiting the inspection of subject vessels to classification societies and requested specific comments on our proposal. Commenters overwhelmingly opposed limiting the inspections solely to classification societies and suggested that we permit anyone with an FCC license to inspect the vessels.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies)

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0 and 80 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by adding a new paragraph (i) to read as follows:

Compliance and Information Bureau

§ 0.311 Authority delegated.

* * * * *

(i) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents or log entries made by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate as certification that the vessel complies with requirements of Articles XI, XII, and XIII of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is authorized to delegate this authority.

3. Section 0.314 is amended by revising paragraph (l) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(l) For inspection or periodical survey as required by Article XII of the Great Lakes Agreement and certification prescribed by Article XIII thereof. The District Director may require that the inspection be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

4. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

5. Section 80.59 is amended by revising the section heading, and paragraphs (a) and (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) Application for inspection of ships subject to the Communications Act or the Safety Convention. FCC Form 801, including documentation that the appropriate inspection fees have been paid, must be used to apply for inspection and certification for ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. An inspection of the bridge-to-bridge radio stations on board vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act will be conducted when the vessels are additionally subject to any of the laws and treaties mentioned in the previous sentence.

(1) Applications for inspections of ships subject to Part II or Part III of Title III or the Safety Convention must be submitted to the Commission in sufficient time to reach the FCC field office serving the port where the ship is to be inspected at least three days prior to the proposed inspection date.

(2) If the inspection described in paragraph (a)(1) of this section is to be scheduled on a Sunday, national holiday or during other than established working hours on any other day, the applicant must additionally submit FCC Form 808 to the FCC field office serving the port where the ship is to be inspected at least three days prior to the inspection.

(b) Inspection and certification of a ship subject to the Great Lakes Agreement. The FCC will not inspect Great Lakes Agreement vessels. An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to § 80.59(b).

* * * * *

6. Section 80.401 is revised to read as follows:

§ 80.401 Station documents requirement.

Licensees of radio stations are required to have current station documents as indicated in the following table:

BILLING CODE 6712–01–P

LEGEND:
R = REQUIRED

DOCUMENTS →

	Radio Station Category	Station License	Appropriate Operator Authorization	Station Logs	Appropriate safety Convention Certificate	Communications Act Safety Certificate	Great Lakes Radio Agreement Safety Certificate	Bridge to Bridge Act Safety Certificate	Part 80; FCC Rules and Regulations	Alphabetical List of Maritime Mobile Call Signs	List of Ship Stations	Manual for use by Maritime Mobile (M/M) Service&M/M Satellite Serv	List Of Coast Stations	List of Radiodetermination and special Services Stations	Station Equipment Records
Shipboard:	Telegraph;Title III, Part II/Safety Convention	R1	R	R	R				R	R	R	R	R	R	
	Telephone; Title III, Part II/Safety Convention	R1	R	R	R				R			R	R2		
	Telephone; Title III, Part II	R1	R	R					R						
	Telephone; Title III, Part III	R1	R	R		R			R						
	Telephone; Great Lakes Radio Agreement	R	R	R4			R4								
	Telephone; Bridge-to-Bridge Act	R	R	R				R							
	Radar	R													
	On Board	R													R
	Voluntary	R	R												
Land:	Public Coast (MF)	R	R	R					R	R3	R3	R3			
	Public Coast (HF)	R	R	R					R	R	R	R			
	Public Coast (VHF)	R	R	R					R						
	Private Coast	R	R												
	Radio Determination	R	R												
	Operational Fixed	R	R												
	Maritime Support	R	R												
	Alaska - Public Fixed	R	R	R											
	Alaska - Private Fixed	R	R												
Ship/Coast:	Marine Utility	R	R												

BILLING CODE 6712–01–C

Notes:

1. The expired station license must be retained in the station records until the first Commission inspection after the expiration date.

2. Alternatively, a list of coast stations maintained by the licensee with which communications are likely to be conducted, showing watchkeeping hours, frequencies and charges, is authorized.

3. Required only if station provides a service to oceangoing vessels.

4. Certification of a Great Lakes Agreement inspection may be made by either a log entry or issuance of a Great Lakes Agreement certificate. Radiotelephone logs containing entries certifying that a Great Lakes Agreement inspection has been conducted must be retained and be available for inspection by the FCC for 2 years after the date of the inspection.

7. Section 80.409 is amended by adding a new sentence at the end of paragraph (b)(2), and revising paragraph (f)(2) to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) * * * Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

(f) * * *

(2) Radiotelephony stations subject to the Great Lakes Agreement and the Bridge-to-Bridge Act must record entries indicated by paragraphs (e) (1), (5), (6), (7), (8), (9), (11) and (12) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information:

(i) The date the inspection was conducted;

(ii) The date by which the next inspection needs to be completed;

(iii) The inspector's printed name, address and class of FCC license (including the serial number);

(iv) The results of the inspection, including any repairs made;

(v) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in Subparts T and U of this part and has successfully passed the inspection; and

(vi) The vessel owner, operator, or ship's master's certification that the inspection was satisfactory.

* * * * *

8. Section 80.411 is amended by adding a new sentence to the end of paragraph (b) to read as follows:

§ 80.411 Vessel certification or exemption.

* * * * *

(b) * * * Ships subject to the Great Lakes Agreement may, in lieu of a posted certificate, certify compliance in the station log required by section 80.409(f).

9. Section 80.953 is revised to read as follows:

§ 80.953 Inspection and certification.

(a) Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months. This inspection must be made while the vessel is in active service or within not more than one month before the date on which it is placed in service.

(b) An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

(1) The date the inspection was conducted;

(2) The date by which the next inspection needs to be completed;

(3) The inspector's printed name, address, class of FCC license (including the serial number);

(4) The results of the inspection, including any repairs made; and

(5) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in Subparts T and U of this part and has successfully passed the inspection.

(c) The vessel owner, operator, or ship's master must certify that the inspection required by paragraph (b) was satisfactory.

(d) The ship's log must be retained on-board the vessel for at least two years from the date of the inspection.

10. Section 80.1005 is amended by adding two new sentences at the end of the section to read as follows:

§ 80.1005 Inspection of station.

* * * An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by section 80.409(f).

[FR Doc. 96–12270 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 24

[DA 96–706]

Waiver of Bid Withdrawal Payment Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On March 6, 1995, Georgia Independent PCS Corporation (Georgia) filed a request for waiver of the bid withdrawal payment provisions applicable to the broadband PCS C block auction. Under the Commission's rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. The Order reduces Georgia's bid withdrawal payment to the minimum bid increment for License B–076 (Chattanooga, TN) in Round 37 of the broadband Personal Communications Services (PCS) C block auction, or $569,898.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 6, 1996 and released May 6, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857–3800.

Order

1. The Wireless Telecommunications Bureau has before it a Request for Waiver of Section 24.704(a)(1) of the Commission's rules filed by Georgia

Independent PCS Corporation (''Georgia''). By this Order, we hereby resolve Georgia's request. Specifically, this Order reduces Georgia's bid withdrawal payment to the minimum bid increment for License B–076 (Chattanooga, TN) in Round 37 of the broadband Personal Communications Services (PCS) C block auction, or $569,898.

2. *Background.* On March 6, 1995, Georgia filed a request for waiver of the bid withdrawal payment provisions applicable to the broadband PCS C block auction. Under the Commission's rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. On May 3, 1996, the Commission issued an Order partially waiving the bid withdrawal payment provisions applicable to the 900 MHz Specialized Mobile Radio (SMR) and broadband PCS C block auctions. The Order resolved the waiver requests of two applicants who submitted erroneous bids which were later withdrawn. The Order also delegated authority to resolve requests for waiver of the bid withdrawal payment provisions involving similar factual circumstances to the Wireless Telecommunications Bureau (''Bureau''). The Order indicated that for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. In addition, the Bureau was directed to consider such requests on a case-by-case basis.

4. *Georgia Waiver Request.* In its request, Georgia alleges that due to a clerical or typographical error, it submitted a bid of $119,720,000 for License B–076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia further alleges that the error may have been due in part to a ''flaw'' in the Commission's remote bidding software. Georgia states that it intended to submit the minimum accepted bid for that round and license, or $11,972,000. Georgia attempted to withdraw its $119,972,000 bid during the bid withdrawal period for Round 37 by contacting the FCC telephonically. Due in part to technical problems with the FCC's wide-area network, Georgia claims it was not able to withdraw its erroneous bid until Round 38. The final high bid on this market at the close of the auction was $21,288,000. Consequently, if the bid withdrawal payment requirement were fully enforced, Georgia would be subject to a bid withdrawal payment of $73,824,000. Affidavits by A.J. Paserella, and Robert L. Swearingen, Jr., two of Georgia's authorized bidders, and Mr. Swearingen's secretary, Wanda Queen, describe the events surrounding the erroneous bid submission.

5. Georgia argues that imposition of the bid withdrawal payment for its erroneous bid would be unduly burdensome and contrary to the public interest. Georgia contends that there is established case law governing mistaken bids that prohibit the requirement of any payment for bids resulting from typographical or clerical errors. It observes that Section 24.822 of the Commission's rules allows for the correction of typographical errors on applicants' short-form applications (FCC Form 175s) and that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, Georgia argues that the most that the Commission should require from bidders who submit erroneous bids is the forfeiture of a single activity rule waiver.

6. *Decision.* In the May 3, 1996, Order, the Commission considered the same issues presented here and indicated that full application of the bid withdrawal payment provisions in instances of erroneous bids would cause an extreme and unnecessary hardship on most bidders. On the other hand, the Commission also indicated that a full waiver of these provisions could threaten the economic efficiency of the auction process. The Commission therefore decided to reduce the bid withdrawal payments substantially, taking into consideration the round and stage in which the mistaken bids were submitted and withdrawn.

7. Among other things, the Commission decided specifically that if a mistaken bid is withdrawn in the same round in which it was submitted, the withdrawal payment should be the greater of (a) the minimum bid increment during the round in which it was submitted or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. The Commission applied this calculation to reduce the bid withdrawal payment of MAP Wireless, L.L.C., who withdrew its erroneous bid in the same round in which it was submitted.

8. Under the facts presented, Georgia has demonstrated that it submitted an erroneous bid of $119,720,000 for License B–076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia has further demonstrated that it attempted to withdraw its erroneous bid in Round 37. Georgia submitted a request for waiver accompanied by sworn affidavits attesting to the veracity of the factual circumstances surrounding the erroneous bid. We find that full enforcement of the bid withdrawal payment against Georgia in this instance would not serve the purpose of this rule and would be contrary to the public interest. In accordance with the Commission's May 3 Order, we find that a partial waiver of Section 24.704(a)(1) of the Commission's rules is warranted. Specifically, because Georgia attempted to withdraw its erroneous bid in the same round in which it was submitted, we will reduce Georgia's required bid withdrawal payment to the minimum bid increment for License B–076 in Round 37 of the broadband PCS C block auction, or $569,898.

9. Accordingly, *it is ordered* that the waiver request submitted by Georgia Independent PCS Corporation is granted to the extent indicated above.

10. *It is further ordered* that Georgia Independent PCS Corporation is subject to a bid withdrawal payment requirement of $569,898.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–12945 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 24

[DA 96–705]

Waiver of Audited Financial Statements and General Application Requirements for the Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: Several parties have filed requests for waiver of Sections 24.720 (f) and (g) of the Commission's rules with respect to the long-form applications (FCC Form 600) to be filed for broadband Personal Communications Service (PCS) C block licenses. The parties argued that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statement is unduly burdensome. The Commission granted the waivers and on our own motion extended the waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720 (f) and (g) of the rules. In

addition, on our own motion, we waived certain ownership information disclosure requirements of Section 24.813(a) (1), and (2) of the Commission's rules for all successful broadband PCS C block bidders filing long-form applications.

EFFECTIVE DATE: May 8, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 8, 1996 and released May 8, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington D.C. 20037 (202) 857–3800.

Order

By the Chief, Wireless Telecommunications Bureau:

1. Several parties have filed requests for waiver of Sections 24.720 (f) and (g) of the Commission's rules with respect to the long-form applications (FCC Form 600) to be filed for broadband Personal Communications Service (PCS) C block licenses. *See, e.g.,* Covington and Burling Request for Waiver on behalf of unnamed investors in C block applicants, filed January 26, 1996. The following applicants (many of which are no longer active bidders in the C block auction) filed requests for waiver of Section 24.720 (f) and (g) along with their short-form applications (FCC Form 175) on November 6, 1995: Adilia M. Aguilar; AirLink, L.L.C.; Airwave Telecommunications, Inc.; BC&D Partners II, L.L.C.; CHPCS, Inc.; B&P PCS, Inc.; CDL Communications, Inc.; Horsetooth Communications, Inc.; Glenn Ishihara; Global Information Technologies, Inc.; James Communications Partners, GP; Lubbock Radio Paging Service, Inc.; Mid-State Systems, Inc.; New Dakota Investment Trust; Overland Company, Inc.; PCS Spectrum Partners, L.P.; R&S PCS, Inc.; Reserve Telephone Company, Inc.; Shawn Capistrano; SPD CableTel, Inc.; South Central Communications Corporation; Teltrust PCS of the Intermountain States, Inc.; Teltrust PCS of Utah, Inc.; USA Microcellular, Inc.; Virginia PCS Alliance Consortium; Whidbey Telephone Company; William Ingram; Windkeeper Communications, Inc.; and Wireless PCS, Inc. Generally, the parties argue that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statements is unduly burdensome. Pursuant to delegated authority, we grant the waivers and on our own motion extend this waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720 (f) and (g) of the Commission's rules. In addition, on our own motion, we waive certain ownership information disclosure requirements of Sections 24.813(a) (1) and (2) of the Commission's rules for all successful broadband PCS C block bidders filing long-form applications.

2. Section 24.709(c)(2)(i) of the Commission's rules provides that each applicant submitting a long-form application shall in an exhibit:

> (i) Disclose separately and in the aggregate the gross revenues and total assets, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's affiliates; the applicant's control group members; the applicant's attributable investors; and affiliates of its attributable investors.

Sections 24.720 (f) and (g) of the Commission's rules require that gross revenues and total assets be evidenced by audited financial statements under most circumstances:

(f) Gross Revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(g) Total assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of the property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

3. Although these rules do not require applicants to file audited financial statements with their long-form applications, they do require gross revenues and total assets reported on the applications to be supported by audited financial statements obtained by the applicants. Several parties contend that for small businesses with limited resources, obtaining audited financial statements would cause an extreme financial hardship.

4. We agree that requiring broadband PCS C block applicants with limited resources to obtain audited financial statements solely for the purpose of supporting the long-form applications is excessively burdensome. Thus, we waive the audited financial statements requirement of Sections 24.720 (f) and (g) of the Commission's rules. With respect to the filing of long-form applications, we believe that this waiver will enable the Commission to continue to obtain timely financial data while providing applicants with some degree of flexibility in their financial reporting practices. We emphasize, however, that applicants and their affiliates shall continue to be required to certify the accuracy of all gross revenue and total assets figures submitted. We also reserve the right to require licensees to provide audited financial statements as required by Sections 24.720 (f) and (g) of the Commission's rules at a later date.

5. Section 24.813(a) of the Commission's rules provides that broadband PCS auction winners filing the long-form application shall include in an exhibit, inter alia:

> (1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.
>
> (2) A list of the party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in the applicant, or an entity in which a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in the applicant (*e.g.,* If company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

6. The former Private Radio Bureau, acting on delegated authority, waived some of the information disclosure requirements of Section 24.813(a)(1) and 24.813(a)(2) for the short-form applications (FCC Form 175s) filed for the auction of the broadband PCS A and

B block licenses. The Wireless Telecommunications Bureau (''Bureau'') later waived the same provisions for the long-form applications for the auction of the broadband PCS A and B block licenses. These same provisions also were waived for the short-form applications filed for the auction of the broadband PCS C block licenses. We find that the public interest would be served by waiving certain ownership information disclosure requirements for the long-form applications filed by the block winning bidders. Specifically, our rules require applicants to list in their long-form applications all businesses in which each attributable stockholder owns at least five percent. This requirement necessitates reporting of interests in firms with no relation to the licenses auctioned. For many companies, particularly investment firms with diverse holdings, compliance with this requirement is extremely burdensome, especially when calculating indirect ownership interests in outside firms. We believe that, for purposes of long-form application processing, requiring stockholders in applicants to report all firms in which they hold an interest of five percent or more is overly burdensome.

7. The purpose of the PCS ownership disclosure requirements is to allow the Commission to determine who is the real party in interest, to determine compliance with the anti-collusion rules, the applicable spectrum caps, certain ownership restrictions such as the multiple and cross ownership rules, and the alien ownership restrictions. All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden.

8. Consequently, we waive the information disclosure requirement of Sections 24.813(a)(1) and 24.813(a)(2) of the Commission's rules with respect to other, outside ownership interests of attributable stockholders of applicants, except that outside interests of five percent or more in other land mobile services (i.e., Commercial Mobile Radio Service licensees or applicants or Private Mobile Radio Service licensees or applicants) shall be disclosed. Also, all direct or indirect interests in the applicant that amount to five percent or more must be reported. All indirect interests held in the applicant should be computed in accordance with the multiplier approach set forth in 47 CFR § 24.204(d)(viii). Institutional investors need only disclose direct or indirect interests of ten percent or more in the applicant, and need to report all outside business interests of five percent or more in CMRS or PMRS businesses. We reserve the right to ask applicants for any additional information required by Section 24.813 of the Commission's rules at a later date. All other long-form reporting requirements will continue to apply.

9. This Order is not subject to the general notice and comment requirement of the Administrative Procedure Act, because it concerns procedural rules, and we are relieving applicants of an administrative burden as opposed to imposing a reporting burden on them. In addition, good cause for the waiver is shown. The waiver will expedite the Commission's ability to process broadband PCS C block applications, thus expediting the delivery of service to the public.

10. Accordingly, *it is ordered* That the requirements of Sections 24.720(f) and 24.720(g) of the Commission's rules, 47 CFR §§ 24.720(f) and 24.720(g), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

11. *It is further ordered* That the requirements of Sections 24.813(a)(1) and 24.813(a)(2), 47 CFR §§ 24.813(a)(1) and 24.813(a)(2), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–12943 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 24 and 90

[FCC 96–203]

Waiver of Bid Withdrawal Payment Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: The Commission has before it requests for waiver of the rules governing bid withdrawal payments associated with spectrum auctions. On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. This Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or $45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

EFFECTIVE DATE: May 3, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 2, 1996, and released May 3, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037 (202) 857–3800.

ORDER

I. Introduction

1. The Commission has before it Requests for Waiver of its rules filed by Atlanta Trunking Associates, Inc. (''ATA'') and MAP Wireless, L.L.C (''MAP''). Specifically, ATA and MAP request waivers of the rules governing bid withdrawal payments associated with spectrum auctions. By this Order, we hereby resolve ATA's and MAP's Requests. Specifically, this Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or $45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

II. Background

2. *Waiver Requests.* On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. In its request, ATA alleges it erroneously submitted a bid of $125,025,000 for license 11P (Atlanta, GA) in Round 9 of the 900 MHz SMR auction. Pursuant to our auction procedures, the minimum acceptable bid for that license in Round 9 was $121,000. According to ATA, it had intended to submit a bid of $125,025, but inadvertently added three extra

zeroes to its bid. ATA immediately reported the error after Round 9 had closed and withdrew its bid in Round 10. When the SMR auction closed, the winning bid for license 11P was $531,000. A declaration by L. Harold Josey, ATA's vice-president and one of its authorized bidders, describes the events surrounding the erroneous bid submission. ATA states that it cannot explain how the typographical error occurred, but suggests that the error may be due to a function of the Commission's bidding software.

4. ATA claims that the public interest will not be served by strict enforcement of the bid withdrawal payment rule in this instance. ATA notes that the error occurred early in the auction and hence there was no harm to the integrity of the auction or other bidders. Because imposition of the full bid withdrawal payment would be a significant burden on ATA, it claims that the ''equities demonstrate that ATA should be provided relief from the Commission's rules as it relates to this typographical error.''

5. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

6. In its request, MAP alleges that due to a typographical error, it submitted a bid of $22,680,020 for license B–380 (Rockford, IL) in Round 10 of the broadband PCS C block auction. Pursuant to our auction procedures, the minimum accepted bid for that round and license was $2,267,000. MAP states that it intended to submit a bid of $2,268,002, slightly higher than the minimum accepted bid. MAP withdrew its $22,680,020 bid during the bid withdrawal period for Round 10. As of Round 170, the standing high bid on license B–380 was $14,433,000. A declaration and statement by Christopher O. Mantle, one of MAP's authorized bidders, describes the events surrounding the erroneous bid submission. MAP alleges that the error was attributable to a ''quirk'' in the Commission's bidding software. MAP claims that the error occurred because the bidding software places a zero on each bid entry line, which does not disappear when a bid is entered unless it is manually removed. As a result, MAP's bid for that round and license was ten times greater than its intended bid. According to MAP, the only error attributable to it is ''failing to notice and delete the extraneous zero caused by the bidder's software format.''

7. MAP argues that imposition of the bid withdrawal payment for its erroneous bid would be inequitable and contrary to the public interest. It observes that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, MAP argues that Commission precedent and principles of administrative law require that parties be allowed to correct typographical errors when dealing with governmental agencies.

8. *Public Notice.* On February 7, 1996, the Wireless Telecommunications Bureau (''Bureau'') released a Public Notice seeking comment on requests for waiver of the Commission's bid withdrawal payment provisions, including the requests of ATA and MAP. See Public Notice, DA 96–145, ''Comment Sought on Requests to Waive Bid Withdrawal Payments and General Enforcement Guidelines'' (rel. February 7, 1996). The waiver requests were filed by ATA, MAP and PCS 2000, L.P. We note that we are deferring action on the request filed by PCS 2000 until a later date. In addition, the Bureau sought comment on proposals to reduce the bid withdrawal payment requirement in cases of erroneous bids attributed to inadvertent or typographical mistakes. The Bureau proposed reducing the bid withdrawal payment in such circumstances to the greater of the upfront payment amount for the market for which the bid was submitted, or five percent of that market's winning bid. Alternatively, the Bureau proposed to treat a mistaken bid that is withdrawn in the same round as if it were made at the minimum accepted bid (if there are no other bids for that round), or at the second highest bit (if there are other bids above the minimum accepted bid). The required payment would be the difference between this amount and the subsequent winning bid. Finally, the Bureau sought comment on whether any circumstances should warrant a complete waiver of the bid withdrawal payment (*e.g.,* a bidding error clearly attributable to a mistake by the Commission, its staff or contractors).

9. *Comments.* In total, 20 parties submitted Comments, and six parties submitted Reply Comments, concerning the waiver requests and the Bureau's proposed enforcement guidelines. Six parties, all participants in the broadband PCS C block auction, submitted comments urging the Commission to deny the various waiver requests and strictly adhere to the applicable bid withdrawal payment provisions. Generally, these commenters argue that a waiver of the bid withdrawal payment provisions would distort the auction process and prejudice other bidders. For example, Quantum claims that if the Commission grants any of these waivers, it would undermine the integrity of the auctions by announcing to bidders that they may strategically place ''erroneous'' bids and withdraw them with impunity. These commenters also note that the bidding software contains numerous safeguards which are designed to encourage bidders to verify their bids prior to submission. PCS One claims that these safeguards have been effective, as bidders in the broadband PCS C block auction have reported only three mistaken bids out of the approximately 11,500 bids submitted as of February 9, 1996. They further note that the Commission staff clearly explained the bid withdrawal provisions as well as the safeguards built in to the bidding software prior to the commencement of the auction.

10. Eight parties, including participants in the broadband PCS C block auction and the 900 MHz SMR auction, urge the Commission to grant the waiver requests and impose no bid withdrawal payment requirement when it is clear that an erroneous bid is the result of an honest typographical or clerical mistake. Some of these commenters note that the Commission adopted the bid withdrawal payment provisions to deter insincere bidding. They further note that in adopting these provisions, the Commission did not contemplate the possibility that bidders might submit erroneous bids, resulting from typographical or clerical errors. Several commenters also argue that alleged problems with the Commission's bidding software necessitate granting the waiver requests at issue. For example, MAP claims that its erroneous bid resulted from an ''irregularity'' in the ''Go to Market'' function of its competitive bidding software. MAP notes that after it filed its request for waiver, the Wireless Telecommunications Bureau released a Public Notice which stated that ''when a bidder begins keying in a bid amount, the zero remains in the bid column as the bid amount's final digit.'' Wilderness claims that the fact that ''several diligent bidders'' have submitted erroneous bids with an extra zero four times indicates that the Commission's software is ''far from fool proof.''

11. Antigone suggests that there is an established body of case law governing mistaken bids that result from clerical or

arithmetic errors. According to Antigone, these cases hold that when a bidder demonstrates that its bid was the result of clerical or arithmetic errors, the government agency holding the auction cannot require a forfeiture. Antigone relies particularly on *Ruggiero* v. *United States* for the proposition that once a factual determination is made that a bidder made a clerical error, equitable principles compel the remission of any bid withdrawal penalty. Similarly, PCS 2000 relies on the practice under certain provisions of the Federal Acquisition Regulation (FAR) for the proposition that bidders who submit erroneous bids may be permitted to withdraw without paying any forfeiture.

12. In addition, several parties submitted comments on our proposed alternatives to the enforcement of the bid withdrawal payment provisions in cases of erroneous bids caused by inadvertent, typographical mistakes. One commenter, Auction Strategy Inc. (ASI), favors the Commission's second proposal, but with some modification. ASI describes how a bidder can ''game'' the second proposal so as to find out critical information concerning a competitor's bidding strategy without being subject to any bid withdrawal payment. ASI proposes modifications which it claims would reduce the bid withdrawal payment for erroneous bids without encouraging bidders to make strategic ''mistakes.''

III. Discussion

13. The Commission established a bid withdrawal payment requirement in order to discourage insincere bidding. Insincere bidding, whether purely frivolous or strategic, distorts the price information generated by the auction process and reduces efficiency.

14. The bid withdrawal payment provisions are silent on how to address erroneous bids which result from typographical or clerical errors. In cases in which the erroneous bid exceeds the intended bid by factors of 10 or more, full application of the bid withdrawal payment provisions could impose an extreme and unnecessary hardship on most bidders. We believe, however, that it may be extremely difficult for the Commission to distinguish between ''innocent'' erroneous bids and ''strategic'' erroneous bids. Furthermore, we are mindful of the negative impact that erroneous bids may have on the integrity of the auction. In particular, an erroneous bid distort the price information generated by the auction process and reduce efficiency. Such distortion and inefficiency may result regardless of whether the bid was the result of an innocent error or was strategically placed. Consequently, we have strongly urged bidders to exercise great caution when submitting their bids.

15. A waiver of the bid withdrawal payment provisions applicable to the 900 MHz SMR auction and to the broadband PCS C block auction is appropriate when a petitioner demonstrates that special circumstances warrant a deviation from the rule and such deviation will serve the public interest. *Northeast Cellular Telephone Company* v. *FCC*, 897 F.2d 1164, 1166 (D.C. Cir., 1990), citing *Wait Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969). On the facts before us, we believe that ATA and MAP have demonstrated that waivers of the applicable bid withdrawal payment provisions are appropriate. ATA and MAP have shown that they submitted erroneous bids which exceeded their intended bids by factors of ten or more. Under these circumstances, full imposition of the bid withdrawal payment provisions would impose an extreme and unnecessary financial hardship. As noted above, these provisions were adopted to discourage insincere bidding. They were not adopted to impose financial hardship on bidders who submit mistaken bids. Full enforcement of the bid withdrawal payment provisions would not serve the underlying purpose of these provisions, nor would it serve the public interest. For these reasons, we believe that ATA and MAP are entitled to a partial waiver of the applicable bid withdrawal payment provisions.

16. In cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. We are concerned, however, that a complete waiver of these provisions could threaten the economic efficiency of the auction process. Such a precedent would encourage future bidders who are uncertain about how much more to bid on a particular license to submit ''mistaken'' bids intentionally so as to gain insight into competitors' valuation of licenses. As ASI points out, accurate bids are essential to the integrity of the auction process. In this regard, we believe that the cases and the practice under certain provisions of the Federal Acquisition Regulation (FAR) cited by Antigone and PCS 2000 are inapposite because of the unique auction methodology employed here (e.g., simultaneous multiple round bidding). We also disagree with MAP's contention that because the Auctions Division has previously granted waivers allowing applicants to correct typographical or clerical errors in their short-form applications (FCC Form 175s), MAP should be entitled to correct the typographical or clerical error which resulted in its erroneous bid. The waivers MAP cites allowed for changes to be made to the applicant's FCC Form 175s. These waivers were granted prior to the commencement of the auction where concerns about strategic manipulation of the bidding process were non-existent. Furthermore, Commission precedent allowed for changes to short-form applications to be made, whereas the Commission has never allowed a bidder to change its bids without being subject to the bid withdrawal payment provisions.

17. Therefore, we intend to partially waive these provisions in a manner which is fair to bidders and which preserves the economic efficiency of the auction process. For those instances in which bidders submit an erroneous bid, we generally agree that the approach proposed by ASI, which is a modification of our second proposal contained in the Public Notice, is most appropriate. In determining an appropriate bid withdrawal payment, we will take into consideration the round and stage in which a mistaken bid is withdrawn. In general, the approach described below follows the guidelines suggested by ASI and is designed to eliminate the strategic benefit of purposely submitting mistaken bids.

18. Specifically, if at any point during an auction a mistaken bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment should be the greater of (a) the minimum bid increment for that license and round, or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment.

Example: Bidder X wishes to place the minimum accepted bid for Market 1. The standing high bid for this market after Round 19 of the auction is $1 million. The minimum bid increment is set at ten percent. Thus, the minimum accepted bid for Market 1 in Round 20 would be $1.1 million. In Round 20, Bidder X erroneously submits a bid of $110 million. If Bidder X withdraws it erroneous bid during the bid withdrawal period for Round 20, it would be subject to a bid withdrawal payment of the minimum bid increment for Round 20, $100,000, or the difference between $1.1 million and the subsequent winning bid, whichever is greater. If Bidder X does not withdraw its bid until Round 21, and the auction is in Stage I or Stage II, it would be subject to a bid withdrawal payment of two times the minimum bid increment, $200,000, or the difference between $1.2 million and the subsequent winning bid, whichever is greater. If Bidder X waits until Round 22 or later to withdraw its erroneous bid, it would be subject to the standard bid withdrawal payment. Similarly, if the auction is in Stage III, and Bidder X fails to withdraw its erroneous bid in Round 20, it would be subject to the standard bid withdrawal payment.

19. Under this approach, the required bid withdrawal payment would be substantial enough to discourage strategic placement of erroneous bids without being so severe as to impose an untenable burden on bidders. In addition, the payment is tailored to the size of the license and the point in the auction when the mistaken bid was submitted. For example, if a mistaken bid is submitted early in a simultaneous, multiple round auction, the potential damage to the economic efficiency of the auction is lower than if it were submitted during the later stages of the auction, and the required bid withdrawal payment would be correspondingly lower. As an auction progresses, however, the potential gain from a strategically-placed erroneous bid is higher, and the potential damage to the efficiency of the auction process is higher. In other words, erroneous bids cause greater damage to the economic efficiency of the auction process as market prices approach their final valuation. Thus, the cost of submitting an erroneous bid during the later stages of an auction is higher than it would be if it were submitted earlier in an auction.

20. We have decided to grant ATA and MAP relief from full enforcement of the bid withdrawal payment rules. Specifically, we will utilize the approach described above to reduce ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9, or $45,594. Similarly, we will utilize the approach described above to reduce MAP's bid withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

21. We delegate to the Wireless Telecommunications Bureau (the ''Bureau'') the authority to resolve similar requests for waiver of the Commission's bid withdrawal provisions. In order for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. We will continue to evaluate these requests on a case-by-case basis. We caution that relief will not be available to bidders if there is evidence that they have engaged in insincere or frivolous bidding or have otherwise acted in bad faith. We consider all allegations of bidder misconduct very seriously.

IV. Ordering Clauses

22. Accordingly, *it is ordered* That the waiver request submitted by Atlanta Trunking Associates, Inc. is granted to the extent indicated above.

23. *It is further ordered* That Atlanta Trunking Associates, Inc. is subject to a bid withdrawal payment requirement of $45,594.

24. *It is further ordered* That the waiver request submitted by MAP Wireless, L.L.C. is granted to the extent indicated above.

25. *It is further ordered* That MAP Wireless, L.L.C. is subject to a bid withdrawal payment requirement of $206,400.

26. *It is further ordered* That we delegate to the Wireless Telecommunications Bureau the authority to resolve bid withdrawal payment waiver requests involving factual circumstances similar to those presented here.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12967 Filed 5–22–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC 34

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status for the California red-legged frog (*Rana aurora draytonii*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Service originally proposed to list the California red-legged frog as endangered, but information obtained during the comment period suggests that this taxon is found in more localities within its current range than previously identified. The California red-legged frog is now found primarily in wetlands and streams in coastal drainages of central California. It has been extirpated from 70 percent of its former range. The California red-legged frog is threatened within its remaining range by a wide variety of human impacts, including urban encroachment, construction of reservoirs and water diversions, introduction of exotic predators and competitors, livestock grazing, and habitat fragmentation. This rule implements the Federal protection and recovery provisions afforded by the Act for this species.

EFFECTIVE DATE: June 24, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Karen J. Miller, at the above address (916 979–2725).

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana aurora draytonii*) is one of two subspecies of the red-legged frog (*Rana aurora*) found on the Pacific coast. *Rana a. draytonii* was first described by Baird and Girard in 1852 from specimens collected at or near the City of San Francisco in 1841 (Storer 1925, Cochran 1961). The California red-legged frog is the largest native frog in the western United States (Wright and Wright 1949),

ranging from 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in.)) in length (Stebbins 1985). The abdomen and hind legs of adults are largely red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color. Dorsal spots usually have light centers (Stebbins 1985). Dorsolateral folds are prominent on the back. Larvae (tadpoles) range from 14 to 80 millimeters (mm) (0.6 to 3.1 in.) in length and the background color of the body is dark brown and yellow with darker spots (Storer 1925).

The historical range of the California red-legged frog extended coastally from the vicinity of Point Reyes National Seashore, Marin County, California, and inland from the vicinity of Redding, Shasta County, California, southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). The northern red-legged frog (*Rana aurora aurora*) ranges from Vancouver Island, British Columbia, Canada, south along the Pacific coast west of the Cascade ranges to northern California (northern Del Norte County). Red-legged frogs found in the intervening area (southern Del Norte to northern Marin County) exhibit intergrade characteristics of both *R. a. aurora* and *R. a. draytonii* (Hayes and Krempels 1986). Systematic relationships between the two subspecies are not completely understood (Hayes and Miyamoto 1984, Green 1985a, Green 1986, Hayes and Krempels 1986). However, significant morphological and behavioral differences between the two subspecies suggest that they may actually be two species in secondary contact (Hayes and Krempels 1986).

Northern Marin County represents the approximate dividing line between *R. a. draytonii* and the intergrade zone along the coastal range (Mark Jennings, National Biological Service, pers. comm., 1993). California red-legged frogs found in Nevada (Linsdale 1938, Green 1985b) were introduced. This rule does not extend the Act's protection to any *R. aurora* in (1) The State of Nevada; (2) Humboldt, Trinity, and Mendocino counties, California; (3) Glenn, Lake, and Sonoma counties, California, west of the Central Valley Hydrological Basin; or (4) Sonoma and Marin counties north and west of the Napa River, Sonoma Creek, and Petaluma River drainages, which drain into San Francisco Bay, and north of the Walker Creek drainage, which drains to the Pacific Ocean.

Several morphological and behavioral characteristics differentiate California red-legged frogs from northern red-legged frogs. Adult California red-legged frogs are significantly larger than northern red-legged frogs by 35 to 40 mm (1.4 to 1.6 in.) (Hayes and Miyamoto 1984). Dorsal spots of northern red-legged frogs usually lack light centers common to California red-legged frogs (Stebbins 1985), but this is not a strong diagnostic character. California red-legged frogs have paired vocal sacs and call in air (Hayes and Krempels 1986), whereas northern red-legged frogs lack vocal sacs (Hayes and Krempels 1986) and call underwater (Licht 1969). Female California red-legged frogs deposit egg masses on emergent vegetation so that the egg mass floats on the surface of the water (Hayes and Miyamoto 1984). Northern red-legged frogs also attach their egg masses to emergent vegetation, but the mass is submerged (Licht 1969).

California red-legged frogs breed from November through March with earlier breeding records occurring in southern localities (Storer 1925). Northern red-legged frogs breed in January to March soon after the ice melts (Nussbaum *et al.* 1983). California red-legged frogs found in coastal drainages are rarely inactive (Jennings *et al.* 1992), whereas those found in interior sites may hibernate (Storer 1925).

The California red-legged frog occupies a fairly distinct habitat, combining both specific aquatic and riparian components (Hayes and Jennings 1988, Jennings 1988b). The adults require dense, shrubby or emergent riparian vegetation closely associated with deep (>0.7 meters (m)) still or slow moving water (Hayes and Jennings 1988). The largest densities of California red-legged frogs are associated with deep-water pools with dense stands of overhanging willows (*Salix* spp.) and an intermixed fringe of cattails (*Typha latifolia*) (Jennings 1988b). Well-vegetated terrestrial areas within the riparian corridor may provide important sheltering habitat during winter. California red-legged frogs estivate in small mammal burrows and moist leaf litter (Jennings and Hayes 1994b). California red-legged frogs have been found up to 30 m (98 feet (ft)) from water in adjacent dense riparian vegetation for up to 77 days (Rathbun *et al.* 1993, Galen Rathbun, National Biological Service, *in litt.*, 1994). Rathbun (*in litt.*, 1994) found that the use of the adjacent riparian corridor was most often associated with drying of coastal creeks in mid to late summer.

California red-legged frogs disperse upstream and downstream of their breeding habitat to forage and seek estivation habitat. Estivation habitat is essential for the survival of California red-legged frogs within a watershed. Estivation habitat, and the ability to reach estivation habitat can be limiting factors in California red-legged frog population numbers and survival.

Estivation habitat for the California red-legged frog is potentially all aquatic and riparian areas within the range of the species and includes any landscape features that provide cover and moisture during the dry season within 300 feet of a riparian area. This could include boulders or rocks and organic debris such as downed trees or logs; industrial debris; and agricultural features, such as drains, watering troughs, spring boxes, abandoned sheds, or hay-ricks. Incised stream channels with portions narrower than 18 inches and depths greater than 18 inches may also provide estivation habitat.

Egg masses that contain about 2,000 to 5,000 moderate-sized (2.0 to 2.8 mm (0.08 to 0.11 in.) in diameter), dark reddish brown eggs are typically attached to vertical emergent vegetation, such as bulrushes (*Scirpus* spp.) or cattails (*Typha* spp.) (Jennings *et al.* 1992). California red-legged frogs are often prolific breeders, laying their eggs during or shortly after large rainfall events in late winter and early spring (Hayes and Miyamoto 1984). Eggs hatch in 6 to 14 days (Jennings 1988b). In coastal lagoons, the most significant mortality factor in the pre-hatching stage is water salinity (Jennings *et al.* 1992). One hundred percent mortality occurs in eggs exposed to salinity levels greater than 4.5 parts per thousand (Jennings and Hayes 1990). Larvae die when exposed to salinities greater than 7.0 parts per thousand (Mark Jennings, National Biological Service, *in litt.*, 1994). Larvae undergo metamorphosis 3.5 to 7 months after hatching (Storer 1925, Wright and Wright 1949, Jennings and Hayes 1990). Of the various life stages, larvae probably experience the highest mortality rates, with less than 1 percent of eggs laid reaching metamorphosis (Jennings *et al.* 1992). Sexual maturity normally is reached at 3 to 4 years of age (Storer 1925, Jennings and Hayes 1985), and California red-legged frogs may live 8 to 10 years (Jennings *et al.* 1992).

The diet of California red-legged frogs is highly variable. Larvae probably eat algae (Jennings *et al.* 1992). Hayes and Tennant (1985) found invertebrates to be the most common food items of adult frogs. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half of the prey mass eaten by larger frogs (Hayes and Tennant 1985). Hayes and Tennant (1985) found

juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. Feeding activity likely occurs along the shoreline and on the surface of the water (Hayes and Tennant 1985).

The California red-legged frog has sustained a 70 percent reduction in its geographic range in California as a result of several factors acting singly or in combination (Jennings *et al.* 1992). Habitat loss and alteration, overexploitation, and introduction of exotic predators were significant factors in the California red-legged frog's decline in the early to mid 1900s. It is estimated that California red-legged frogs were extirpated from the Central Valley floor before 1960. Remaining aggregations (assemblages of one or more individuals, not necessarily a viable population) of California red-legged frogs in the Sierran foothills became fragmented and were later eliminated by reservoir construction, continued expansion of exotic predators, grazing, and prolonged drought. Within the Central Valley hydrographic basin, only 14 drainages on the Coast Ranges slope of the San Joaquin Valley and one drainage in the Sierran foothills are actually known to support or may support California red-legged frogs, compared to over 60 historic locality records for this basin (a 77 percent reduction). The pattern of disappearance of California red-legged frogs in southern California is similar to that in the Central Valley, except that urbanization and associated roadway, large reservoir (introduction of exotic predators), and stream channelization projects were the primary factors causing population declines. In southern California, California red-legged frogs are known from only five locations south of the Tehachapi Mountains, compared to over 80 historic locality records for this region (a reduction of 94 percent).

California red-legged frogs are known to occur in 243 streams or drainages in 22 counties, primarily in the central coastal region of California. The current number of occupied drainages represents information obtained during the public comment period and re-evaluation of Service records. This re-evaluation resulted in the compilation of a threat matrix for all drainages known to support California red-legged frogs (U.S. Fish and Wildlife Service 1995). The term ''drainage'' will be used to describe named streams, creeks, and tributaries from which California red-legged frogs have been observed. For purposes of this final rule, a single occurrence of California red-legged frog is sufficient to designate a drainage as occupied by, or supporting California red-legged frogs. Monterey (32), San Luis Obispo (36), and Santa Barbara (36) counties support the greatest number of currently occupied drainages. Historically the California red-legged frog was known from 46 counties, but the taxon is now extirpated from 24 of those counties (a 52 percent reduction in county occurrences). In seven of the 22 occupied counties (32 percent), California red-legged frogs are known from a single occurrence. The most secure aggregations of California red-legged frogs are found in aquatic sites that support substantial riparian and aquatic vegetation and lack exotic predators (e.g., bullfrogs (*Rana catesbeiana*), bass (*Micropterus* spp.), and sunfish (*Lepomis* spp.)). Only three areas within the entire historic range of the California red-legged frog may currently support more than 350 adults, Pescardero Marsh Nature Preserve (San Mateo County), Point Reyes National Seashore (Marin County), and Rancho San Carlos (Monterey County). The San Francisco Airport drainage location, identified in the proposed rule as containing over 350 individuals, is now thought to be nearly extirpated. Threats, such as expansion of exotic predators, proposed residential development, and water storage projects, occur in the majority of drainages known to support California red-legged frogs.

Previous Federal Action

On January 29, 1992, the Service received a petition from Drs. Mark R. Jennings and Marc P. Hayes, and Mr. Dan Holland to list the California red-legged frog (*Rana aurora draytonii*). The petition specified endangered or threatened status by distinct drainages (watersheds) within the range of the species. On October 5, 1992, the Service published a 90-day petition finding (57 FR 45761) that substantial information had been presented indicating the requested action may be warranted. Public comments were requested and a review of the species' status was initiated. The California red-legged frog had been included as a Category 1 candidate species in the Service's November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates (now known simply as candidates) are species for which the Service has sufficient information on biological vulnerability and threat to support proposals to list them as endangered or threatened. On July 19, 1993, the Service published a 12-month finding on the petitioned action (58 FR 38553). This finding indicated that listing of the California red-legged frog was warranted and that a proposed rule would be published promptly. On February 2, 1994 (59 FR 4888), the Service published a proposal to list the California red-legged frog as an endangered species. Based on new information received during the comment period on the proposed rule, the Service now determines the California red-legged frog to be a threatened species.

Summary of Comments and Recommendations

In the February 2, 1994 proposed rule (58 FR 4888) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the San Francisco Chronicle on February 9, 1994, and the Sacramento Bee on February 10, 1994, both of which invited public comment.

The Service received eight written requests for a public hearing. Three requests came from the Mosquito and Vector Control Districts of Glenn, Sutter/Yuba, and Butte counties. Additional requests came from William Hazeltine, a private consultant; the California Cattlemen's Association; the Cambria Community Services District; the United Residential Lot Owners of Cambria, Inc.; and Price, Postel, and Parma, a Santa Barbara law firm. As a result, the Service published a notice of public hearing on April 8, 1994 (59 FR 16792), and reopened the comment period until May 27, 1994. Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearing. A newspaper notice of the public hearing was published in the Sacramento Bee on April 25, 1994, which invited general public comment. A public hearing was conducted at the Radisson Hotel in Sacramento, California on May 12, 1994. Testimony was taken from 6:00 p.m. to 8:00 p.m. Seventeen individuals testified at the hearing.

During the comment periods, the Service received 72 comments (i.e., letters and oral testimony) from 57 individuals or agencies. Of the 31 commenters that stated a position, 22 (71 percent) supported listing and 9 (29 percent) did not.

Support for the listing was expressed by one State agency (California

Department of Parks and Recreation) and 18 other interested parties. Three commenters recommended listing the California red-legged frog as threatened. Opposition to the listing was expressed by two mosquito abatement or vector control districts and seven other interested parties. Of the 26 respondents indicating no position on the listing, several expressed concern regarding the impact of listing.

Written comments and oral statements obtained during the public hearing and comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in 10 general groups based on content. These categories of comment, and the Service's response to each, are listed below.

Issue 1: Insufficiency of Scientific Data

Comment: Several commenters stated that insufficient data are available to warrant listing of the California red-legged frog. They suggested that the distribution of the California red-legged frog is more widespread and that many more sites may exist than were reported in the proposed rule because surveying within the historic range of the taxon has not been complete. One commenter suggested that only easily accessible areas on the coast seemed to have been surveyed and if a watershed approach had been taken, the range of the species would be greater than 30 percent of its historical range. Another commenter suggested that many surveys were done in drought years, which would bias the data.

Service Response: The Service mapped the current range of the California red-legged frog based on survey results. Wherever a watershed was known to support California red-legged frogs, the entire watershed was included as being within the species' current range. The only watersheds that were not included in their entirety are those in the Sierra Nevada where the upper reaches are too high in elevation to provide habitat for the California red-legged frog, and portions of watersheds located on the Central Valley floor. In the Coast Ranges, watersheds lacking information on California red-legged frogs were included within the current range of the California red-legged frog from Marin County south to Ventura County.

Over the last 15 years, the petitioners have conducted multiple surveys, visiting each survey site a minimum of three times, to determine the status of the California red-legged frog throughout its entire range. The petitioners rechecked 75 percent of the historic sites in the coastal region of the range of the California red-legged frog and all suitable habitat within the species historic range in the Central Valley and Sierra Nevada foothills including all but one of the historic sites. This site was surveyed by another herpetologist, Dave Martin (Jennings, pers. comm., 1995). In surveying suitable habitat, access to some areas was denied by private landowners. Even so, surveyors were able to obtain access to all major drainages within their survey area (Jennings, pers. comm., 1995). Many of the surveys were conducted between 1986 and 1990, which were considered drought years. However, in the majority of cases reasons other than drought were considered responsible for the absence of frogs (Jennings, pers. comm., 1995). Where drought was thought to be the case, repeat surveys were performed in subsequent wet years (Jennings, pers. comm., 1995). Approximately half of the sites surveyed were along roadsides and easily accessible. The remaining sites were difficult to access, often requiring strenuous hikes (Jennings, pers. comm., 1995). Surveying by the petitioners and others is ongoing in many portions of the State.

Surveys conducted by other researchers support the conclusions of the petitioners. Extensive surveying has been conducted in years with and without drought conditions in Sierran national forests by David Martin (University of California, Santa Barbara,, pers. comm., 1994); Santa Clara County and the foothills of the western Sierra Nevada between Modesto and Fresno by the Coyote Creek Riparian Station (*in litt.*, 1993); the Sacramento Valley, San Joaquin Valley and inner Coast Ranges by the University of California at Davis (H. Bradley Shaffer, University of California, Davis, *in litt.*, 1994); Santa Cruz County by the University of California at Santa Cruz (Nauman 1992); Santa Cruz and San Mateo counties (Mike Westphal, Coyote Creek Riparian Station, 1995), and the Point Reyes Peninsula by the National Park Service (Gary Fellers, National Biological Service, *in litt.*, 1994).

As a result of these surveys and additional information received during the public comment period following publication of the proposed rule, 54 new localities of California red-legged frogs were identified. The majority of these sightings, however, are within the current range of the California red-legged frog as identified in the proposed rule. The exceptions are the discovery of California red-legged frogs in the Sierran foothills (Butte County, Pinkard Creek), the Transverse mountain range (Los Angeles county near Palmdale), Sulphur Springs Creek in Solano County, and Mine Creek in Fresno County; the latter two representing minor range extensions to the east. The Service is confident that the Central Valley floor, Sierra Nevada foothills, and southern California (south of the Tehachapi Mountains) have been surveyed sufficiently to draw the conclusion that California red-legged frogs have been extirpated or nearly extirpated from these regions. These three regions comprise over 70 percent of the California red-legged frog's historic range.

Section 4(b)(1)(A) of the Act requires that a listing determination be based on the best scientific and commercial data available. The Service bases this listing determination on data collected over a period of 15 years by the petitioners and numerous other qualified herpetologists. All data indicate a downward trend in the range of the California red-legged frog and a preponderance of small, fragmented aggregations of frogs. The viability of the remaining California red-legged frog aggregations is threatened by numerous factors which are discussed in detail in this rule. The Service maintains, therefore, that sufficient data are available to warrant listing the California red-legged frog. However, because the Service received significant additional information on locations of California red-legged frog aggregations within their current range during the comment period, listing the taxon as threatened rather than endangered is deemed more appropriate.

Comment: Another commenter stated that the conclusion in the proposed rule that 75 percent of the species' remaining range is threatened by one or more factors has no basis in scientific fact and is not supported by any substantial scientific evidence.

Service Response: The proposed rule stated that the California red-legged frog has been extirpated from 75 percent of the historic range of the taxon. Because of the inclusion of 54 additional streams or drainages known to support California red-legged frogs, the final rule has been revised to state that extirpation has occurred in 70 percent of the historic range. The commenter misinterpreted the information in the proposed rule. The estimate of extirpated range is based on information published in the literature and presented to the Service by the petitioners and other herpetologists, survey biologists, and consultants.

Comment: One commenter stated that an article in the March 1, 1994, San Ramon Valley Times reported that the East Bay Regional Park District had not

surveyed for frogs on its properties. Given that the District comprises over 75,000 acres, the commenter believed that this lack of information was a significant data gap.

Service Response: East Bay Regional Park District biologists and private consultants in 1990, 1993, and 1994 surveyed an estimated 95 percent of District properties that could contain California red-legged frog habitat (Joseph DiDonato, East Bay Regional Park District, pers. comm. and *in litt.*, 1994; Karen Swaim, LSA Associates, Inc., *in litt.*, 1994). California red-legged frogs were found in 5 of 53 District parks. Included in the survey results were 8 streams or drainages not previously known to be inhabited by California red-legged frogs.

Comment: One commenter stated that the information on California red-legged frog locations in Alameda County is probably not complete. The commenter contended that California red-legged frogs are probably not as rare in Alameda County as purported in the proposed rule.

Service Response: California red-legged frogs are known from 21 drainages in the county. Many other drainages in the county that have been surveyed by the East Bay Regional Park District and LSA Associates, Inc. harbor only bullfrogs. Of the 22 counties known to support aggregations of California red-legged frogs, Alameda County ranks ninth in total number of drainages supporting the taxon. Over half of the known frog aggregations in the county, however, are threatened by various factors including exotic predators, urban development, off-road vehicles, and grazing. While it is possible that some California red-legged frog locations have yet to be discovered, the Service believes it is unlikely that California red-legged frogs inhabit more than the 21 known drainages in Alameda County.

Comment: One commenter stated that the Service's data on locations of California red-legged frogs does not match information contained in the California Department of Fish and Game Natural Diversity Database (NDDB).

Service Response: The researchers who petitioned the Service to list this species and the Service have reviewed all data available from the NDDB regarding locations of California red-legged frogs. The NDDB currently contains approximately 122 records of California red-legged frogs. The petitioners have determined current and historic range of the taxon from 1,205 museum records and 250 records from other sources coupled with extensive field checking of records. All locations identified in the NDDB prior to 1992 were field checked by the petitioners. All new locations identified in the NDDB from 1992 to the present have been added to the Service's analysis of the current range of the California red-legged frog. These additional records have not appreciably extended the currently known range of the taxon.

Comment: Several commenters noted that the proposed rule indicated uncertainty in biology, life cycle, habitat requirements, and predators of the California red-legged frog, including identifying where frogs overwinter, where post-metamorphic frogs feed, what larvae eat, and site specific predators. The commenters believed that listing of the taxon was not warranted until these data gaps were filled.

Service Response: The Service has relied on the best available scientific and commercial data in making this listing determination. The Service concurs that many aspects of the biology, predator-prey interactions, and microhabitat requirements of the California red-legged frog are not completely understood. This is true for most species of wildlife, including common species that have been studied extensively. Sufficient knowledge of the biology and habitat requirements of the California red-legged frog exists to identify suitable habitats for the taxon, and document population sizes, threats, and its status over time. It is this latter information along with the scientific and commercial information that is used in determining whether or not to list a species under section 4(a) of the Act. A complete understanding of the biology and microhabitat requirements of a listed species are most important in the recovery process. However, a significant delay in listing a species due to large, long-term biological or ecological research efforts could compromise the survival of the California red-legged frog.

Comment: Several commenters stated that the proposed rule cites livestock grazing as a major factor in the decline of the California red-legged frog, but fails to offer site-specific examples of habitat degradation and ''take'' of the species as a result of grazing. One commenter thought that the Service, therefore, could not restrict grazing practices in any way if the species is listed.

Service Response: The proposed rule includes livestock grazing as one of many factors affecting the California red-legged frog, and ranks it as a contributing factor, rather than as a major factor. No site specific studies have been done that document the decline and disappearance of California red-legged frogs once grazing is introduced into an area. Most evidence on the effects of grazing on the California red-legged frog is circumstantial. However, extensive research has been done on the effects of livestock grazing on the aquatic environment. As stated in the proposed rule, the petitioners found that grazing occurred at all historic sites known to support California red-legged frogs in the Central Valley hydrologic basin. Combining this information with information about the habitat preferences of the California red-legged frog leads to the logical conclusion that grazing, where it has dramatically altered California red-legged frog habitat, has played a role in the decline of this taxon.

Comment: One commenter stated that the petition to list the California red-legged frog relies heavily on personal observations, personal communications, and unpublished data. Although the Service is required to base listings on the ''best available data'', the commenter believed that such information did not meet the definition of scientific data because they would be impossible to verify. Three commenters recommended that the proposed listing action be halted and a comprehensive, unbiased scientific review of the status of the California red-legged frog be initiated and published.

Service Response: The researchers who petitioned the Service to list the California red-legged frog are acknowledged experts on this taxon as evidenced by numerous peer reviewed publications on the subject. The majority of the personal observations cited in the petition refer to specific aspects of California red-legged frog biology, which is relevant to the species' management, but less important in determining species' status. Many of the references to unpublished data in the petition refer to distribution and status information that had been collected by the petitioners as part of their ongoing research to follow the status of the California red-legged frog. Much of their status information is supported by surveys conducted by numerous other qualified herpetologists. The Service, therefore, finds that the data presented by the petitioners are credible and have been verified by other experts in the field.

Comment: Several commenters requested that prior to listing the California red-legged frog, the Service quantify impacts to the various life stages of the frog caused by storm damage repair, flood control efforts, reservoir creation, diking and ditching,

regular road maintenance, disease, livestock grazing, off-road vehicle use, timber harvest, predation by native and non-native predators, competition, ultraviolet radiation, water quality, agricultural practices, recreation, reproductive interference, drought, wildfires, flooding, and natural population fluctuations.

Service Response: Section 4(a)(1) of the Act requires the Service to evaluate threats to the species. The Service is unable to quantify how each of the above individual threats has impacted the California red-legged frog. Many threats work synergistically to cause population declines. Thus, the effect of each threat cannot be quantified separately. The above factors are believed to contribute to significant population declines. Completing research in all these areas prior to listing the California red-legged frog could seriously compromise its survival because of lengthy time periods needed to quantify impacts. Further research in these areas, however, would aid the Service in future recovery actions for this species.

Comment: One commenter recommended that the Service delineate the current range and habitat locations of the California red-legged frog in San Joaquin County prior to listing.

Service Response: The Service has delineated the current range and specific habitat locations of California red-legged frogs in San Joaquin County. Two locations of the California red-legged frog occur in San Joaquin County, both in western portions of the county. The distribution map for the California red-legged frog includes all portions of western San Joaquin County that lie on the east slope of the coast range, west of Highway 580.

Comment: One commenter recommended that the Service quantify California red-legged frog population numbers in lotic and lentic habitat and establish management and recovery programs for each habitat type prior to listing the taxon.

Service Response: A recovery plan will be prepared for the California red-legged frog after the taxon is listed. Completion of the above recommended research would be most appropriate during the recovery process for the California red-legged frog.

Issue 2: Causes for California Red-Legged Frog Decline

Comment: Several commenters suggested that ultraviolet-B (UV–B) radiation or estrogen mimics, which have been implicated in the current observed worldwide decline in amphibians, may be significant causes of observed declines in the range and numbers of California red-legged frogs.

Service Response: The Service has reviewed the paper by Blaustein *et al.* (1994) regarding the possible effect of UV–B radiation on the eggs of three amphibian species, the Pacific treefrog (*Pseudacris regilla*), western toad (*Bufo boreas*), and Cascade frog (*Rana cascadae*). Our review focused on results reported for the Cascade frog, because this species is most closely related to the California red-legged frog. Results of tests on Cascade frog eggs from two sites showed mixed results. One site showed that hatching success of *R. cascadae* was greater under sunlight lacking UV–B than under unfiltered sunlight. At the second site, however, the hatching success under UV–B blocking filters was not significantly different from success under unfiltered sunlight. Thus, these data do not present sufficient evidence of a correlation between UV–B radiation and hatching success in the related Cascade frog.

Because UV–B radiation would have greater adverse effects at higher elevations, the Cascade frog, which is a higher elevation species than the California red-legged frog, would be expected to be more severely affected by UV–B radiation, if indeed this is an important factor. Also, because the California red-legged frog attaches its egg masses to aquatic vegetation and prefers aquatic habitats with overhanging vegetation, the effects of UV–B radiation would be expected to be less than for the Cascade frog, whose eggs are typically laid in shallow open water (Nussbaum *et al.* 1983). In addition, the majority of the observed decline in the California red-legged frog occurred prior to the late 1970's, which is when noticeable declines in amphibian species began in western North America (M. Jennings, pers. comm, 1994).

A number of recent studies address certain contaminants that disrupt biological processes by mimicking the effects of naturally produced hormones, such as the female hormone estrogen (Raloff 1994). This phenomenon has been implicated in the recent worldwide decline in amphibians. Several studies have been done on reptiles, including the American alligator (*Alligator mississippiensis*) and red-eared slider turtle (*Pseudemys scripta elegans*). To our knowledge, no studies have been done on amphibians. The potential effects of estrogen mimics on California red-legged frogs are unknown. In addition, the majority of the observed decline in the California red-legged frog occurred prior to the late 1970's, which is when noticeable declines in amphibian species began in western North America (M. Jennings, pers. comm, 1994).

Comment: Several commenters stated that evidence suggesting mosquitofish (*Gambusia affinis*) are significant predators of California red-legged frog larvae is not strong. The commenters stated that infrequent co-occurrence of fish and frogs does not explain potential causation. Other factors may be involved in population decline including microhabitat features of wetlands, which cannot be successfully duplicated in a laboratory setting. Also in a natural setting, the vulnerable stage for California red-legged frog tadpoles (February through April) normally does not coincide with the time of year when mosquitofish numbers are high. Microhabitat usage may not overlap. The commenters pointed out that there are sites where mosquitofish and California red-legged frogs coexist. One commenter objected to the mosquitofish being included as a verified predator of California red-legged frogs and especially as an organism more harmful than introduced centrarchid fishes or bullfrogs.

Service Response: The Service is aware of only one study that has indicated that in laboratory settings mosquitofish prey on the larvae of California red-legged frogs (Schmieder and Nauman 1994). However, there is a strong correlation between the absence of California red-legged frogs and the presence of mosquitofish in the field. The Service is aware of several sites where mosquitofish and California red-legged frogs are currently coexisting. This evidence suggests that the relationship between mosquitofish and California red-legged frogs is complex. Additional research clearly is needed to more fully understand how these two species interact. The final rule has been revised to reflect current knowledge on this issue. The Service cannot determine whether mosquitofish are harmful to California red-legged frogs.

Comment: Several commenters disagreed that mosquitofish could be significant predators of California red-legged frogs. They cited observations in mosquitofish ponds of mosquitofish numbers decreasing as a result of infestations by bullfrogs. These commenters noted that no predation of bullfrog tadpoles by mosquitofish was observed.

Service Response: Mosquitofish would not be expected to prey on larval bullfrogs because of the apparent olfactory rejection (unpalatability) of bullfrog larvae by predatory fish (Kruse and Francis 1977). California red-legged

frogs lack this olfactory rejection effect, and, therefore, cannot be compared to bullfrogs (Schmieder and Nauman 1994).

Comment: One commenter pointed out that widespread, large scale use of mosquitofish in California began in the mid to late 1970's, and therefore, could not be responsible for the extirpation of California red-legged frogs from the Central Valley floor because frogs were extirpated from this region before 1960.

Service Response: The Service concurs that mosquitofish were not a major factor in the decline and disappearance of California red-legged frogs from the Central Valley floor. The proposed and final rules point to overharvest combined with the loss of over 3,800,000 acres of wetlands as the major reasons for extirpation of California red-legged frogs from the valley floor (Frayer, *et al.* 1989). However, significant introductions of mosquitofish began in the Central Valley as early as 1922 (Moyle 1976). Thus it is possible that mosquitofish played a role in the decline of California red-legged frogs on the Central Valley floor.

Comment: Two commenters stated that mosquitofish are not significant predators of California red-legged frogs because the two species coexist in wetlands in Shasta and Colusa counties.

Service Response: California red-legged frogs were extirpated from Shasta and Colusa counties before 1960 (Jennings *et al.* 1992).

Comment: Several commenters provided more specific or additional information on threats to California red-legged frogs within their current range. Several commenters provided information regarding potential threats, including road kills, current harvesting of California red-legged frogs for food, construction activities, and poor management of flood control basins.

Service Response: These comments have been noted and included in this final rule.

Comment: One commenter stated that massive predation by introduced predators, not grazing, is in large part responsible for any observed population declines in the California red-legged frog. Similarly, another commenter stated that the decline and disappearance of California red-legged frogs in the foothill portions of Madera, Fresno, and Mariposa counties were due to dispersal of bullfrogs into stock ponds, and not due to grazing. The commenter stated that California red-legged frogs coexisted with grazing until about 1940, when bullfrogs were introduced into the San Joaquin Valley.

Service Response: Of the identified threats facing the California red-legged frog, introduced predators, including bullfrogs, are considered to be a significant and widespread threat. Over 50 percent of streams and drainages inhabited by California red-legged frogs are known to support bullfrogs or other exotic predators in some portion of that drainage. Grazing, however, can threaten the California red-legged frog where grazing pressure results in dramatic changes in riparian and wetland habitat. As discussed in this final rule, California red-legged frogs generally prefer densely-shaded wetland habitats, whereas bullfrogs prefer more open wetland habitats. Overgrazing in riparian areas, therefore, exacerbates the threat of bullfrog expansion by creating habitat bullfrogs prefer.

Comment: One commenter stated that profitable livestock operations and high quality riparian habitat areas are not mutually exclusive. The commenter points to Point Reyes National Seashore as an example of where cattle grazing and California red-legged frogs successfully coexist. The commenter stressed that livestock grazing is the only economic activity in the region that provides large contiguous areas of open space.

Service Response: The Service concurs that properly managed livestock grazing can be compatible with preservation of California red-legged frog populations. California red-legged frogs and cattle grazing are able to coexist at Point Reyes National Seashore because the National Park Service maintains tight control over grazing pressure (Gary Fellers, National Biological Service, pers. comm., 1994). The Service acknowledges that preservation and proper management of open space, especially in riparian areas, is a fundamental requirement in the survival and recovery of the California red-legged frog.

Comment: One commenter stated that the single most devastating change in wildlife habitat in California in the last 200 years has been urbanization. The commenter thought that the proposed rule had not given this factor proper recognition, but instead condemned activities such as livestock grazing.

Service Response: The proposed rule and this final rule do not single out livestock grazing as the greatest threat to the California red-legged frog, but instead discusses all factors known or likely to threaten California red-legged frog populations. The proposed and final rules list numerous proposed developments that threaten remaining populations of California red-legged frogs. The Service believes urbanization, as well as agriculture, have caused substantial changes in wildlife habitat in California. This is especially the case in the Central Valley, which historically was the stronghold of the California red-legged frog.

Comment: Several commenters stated that climatic conditions (i.e., drought and above average rainfall events) were more to blame for California red-legged frog declines than human activities, including timber harvest and historic commercial harvest of the California red-legged frog itself. One commenter noted that dramatic declines in historic frog harvest information could indicate that the species is subject to wide variation in population numbers due to climatic conditions rather than an indication of overharvest. The commenter requested that an historical survey of the variations in population numbers due to climatic changes be undertaken prior to publication of a final rule.

Service Response: The rule includes a discussion of natural factors, such as drought and heavy rainfall events, that are known to adversely affect California red-legged frog populations. It is difficult to separate the effects of natural events from human activities when attempting to determine the cause for a population's decline in a particular area. A single factor is seldom the cause of the decline of a species. Many of the factors discussed in the proposed rule and this final rule work synergistically. Regardless of which factors resulted in historic population declines, California red-legged frog populations in the Central Valley and Sierra Nevada, in particular, could not rebound from this decline because at the same time their wetland and riparian habitat was being converted to agricultural land and urban areas.

Populations of most species are cyclic in nature, responding to such natural factors as weather events, disease, and predation. Natural events, however, including long-term drought or extreme rainfall, have less of a negative effect overall on a species when that species is widely and continuously distributed. Where populations are small, fragmented, or isolated by various human-related factors including habitat loss, water development, and water diversion, these populations are more vulnerable to extirpation by stochastic or random events and cumulative effects.

It is likely that over time, California red-legged frogs experienced wide variations in population size as a result of climatic events. A historical survey dating back to the early 1900's focusing on the variation in frog population

numbers due to climatic changes is not possible because no range wide population information was collected on the California red-legged frog dating back that far. If such data existed, conclusions drawn from such an historical survey would be tenuous. The many adverse human factors that have contributed to California red-legged frog population declines since 1900 would cloud any analysis of the effects of drought or high rainfall events.

Comment: One commenter disagreed with the conclusion that pre-1900 overharvesting of the California red-legged frog in the Central Valley led to their decline. The commenter stated that other known historical factors were not cited in the proposed rule.

Service Response: No studies were conducted in the late 1800's or early 1900's documenting the cause or causes of declines in California red-legged frog populations in the Central Valley. Extremely high numbers of California red-legged frogs reported in the San Francisco markets followed by a collapse of the market around the turn of the century strongly suggests that commercial harvesting had a significant effect on California red-legged frog numbers. The Central Valley, and particularly the San Joaquin Valley, were reported at the time to be prime habitat for the California red-legged frog. The proposed rule and this final rule reported all known historical factors that may have contributed to the decline of California red-legged frogs in the Central Valley. Overharvesting was certainly not the only factor impacting California red-legged frog populations. Conversion of over 3,800,000 acres of wetland and riparian habitats in the Central Valley to agricultural land and urban areas began during the same period, resulting in the elimination of California red-legged frogs from the valley floor before 1960.

Comment: Several commenters stated that many of the urban development projects referred to in the proposed rule in the Central Coast region may or may not be constructed during the next 5 or 10 years.

Service Response: The Service recognizes that all projects proposed are not necessarily completed. This may be due to lack of proper permits necessary for construction, or interruption of planning efforts. The fact that projects have been proposed presents a future threat to California red-legged frog aggregations in the central coast region, especially if these projects result in direct or indirect riparian habitat degradation.

Comment: One commenter stated the proposed rule incorrectly includes the Cambria Meadows drainage as an area where California red-legged frog habitat has been directly degraded through stream reductions to accommodate new urban growth.

Service Response: This final rule states that proposed urban and/or recreational development could degrade or eliminate California red-legged frog habitat in Cambria Meadows Creek.

Comment: One commenter thought that support of the proposed listing appeared to rely heavily on conditions reported for the north coast of San Luis Obispo County.

Service Response: Neither the proposed rule nor this final rule rely heavily on conditions reported for the north coast of San Luis Obispo County in determining the need to list the California red-legged frog. San Luis Obispo County contains the third highest number of drainages known to support California red-legged frogs. Although California red-legged frog aggregations in streams in the county are threatened by a variety of factors, many other counties have comparable threats that are reported in the proposed and final rule.

Comment: Several commenters were concerned about the accuracy of the conclusions drawn by Rathbun *et al.* (1991) as cited in the proposed rule regarding the combined effects of water extraction and drought on populations of California red-legged frogs in lower Santa Rosa Creek. Numerous commenters presented data both to support and refute the hypothesis that water extractions from Santa Rosa Creek have significantly changed its hydrology.

Service Response: The Service recognizes that controversy exists regarding the environmental effects of water extraction from Santa Rosa Creek. The information and data presented by the many commenters on this subject will be thoroughly reviewed by Service field biologists during recovery planning efforts and when consulting on any proposed projects that could adversely affect California red-legged frogs in Santa Rosa Creek.

Ground water and surface water supplies in Santa Rosa Creek are finite. Unchecked water extraction may exceed input and significantly reduce the availability of riparian and aquatic habitat for California red-legged frogs in the future. Drought accentuates the effect, and if not considered in water planning, overallocation of stream flows and overdraft of groundwater resources combined with long-term drought could result in permanent elimination of California red-legged frogs from all or a large part of the drainage.

Comment: Several commenters pointed out that although California red-legged frogs were absent from lower Santa Rosa Creek during the drought (Rathbun *et al.* 1991), red-legged frogs have been sighted in recent years in the lower reaches of the creek, presumably because of the above average rainfall in the winter of 1992–1993. California red-legged frogs, which were known to inhabit upper reaches of the creek during the drought years, were presumed to have traveled downstream to reoccupy former habitat. One commenter suggested that the Service should study an entire watershed prior to concluding that the California red-legged frog is threatened in that watershed.

Service Response: The Service is aware that California red-legged frogs occur in the upper reaches of Santa Rosa Creek. Santa Rosa Creek is one of 32 drainages in San Luis Obispo County known to provide habitat for the California red-legged frog. Neither the Service nor Rathbun et al. (1991) have concluded that California red-legged frogs have disappeared from Santa Rosa Creek. Rathbun *et al.* (1991) refers only to conditions in the lower portions of the creek and lagoon.

The Service recognizes that the California red-legged frog is capable of repopulating former habitat when rainfall returns. However, other factors, including overallocation of water, may exacerbate the effects of drought through loss of riparian habitat or increased salinity in coastal lagoons. Where appropriate riparian or wetland habitat is degraded over the long-term by these hydrologic modifications, repopulation by California red-legged frogs in altered portions of the drainage is not possible regardless of whether red-legged frogs occur in upstream reaches. As portions of the drainage become unsuitable habitat for California red-legged frogs, isolated aggregations of frogs become more susceptible to stochastic extinction. The Service is not basing this listing determination on the status of the California red-legged frog in any one specific watershed, but rather on the continuing population decline and threats to the remainder of its range.

Comment: One commenter noted that California red-legged frogs persist in upstream portions of Carmel River despite the fact that bullfrogs are found in the lower river and two reservoirs. The commenter felt that this evidence refuted the assertion that California red-legged frog populations usually disappear from a drainage within 5 years after a reservoir is built.

Service Response: The proposed rule and this final rule state that California red-legged frogs generally are extirpated from downstream portions of a drainage 1 to 5 years after filling of a reservoir. Hayes and Jennings (1988), which is cited as the source of this information, does not present this cause and effect relationship as an absolute. The authors state that this relationship depends on the size of the drainage. In larger drainages, isolated populations can persist upstream. This final rule has been revised to clarify this point.

Comment: One commenter thought that too much emphasis was given to the negative impacts of salinity levels in coastal lagoons. Natural overwash of salt water into coastal lagoons makes these areas unreliable habitat for California red-legged frogs.

Service Response: The Service acknowledges that coastal lagoons provide unreliable habitat for California red-legged frogs because of natural salinity changes caused by wave overwash. However, large populations of California red-legged frogs do occur in coastal lagoons, with Pescadero Marsh supporting one of the largest remaining populations. Therefore, the larger lagoon systems should not be discounted. Overallocation of stream water resources intensifies the effect of drought on coastal lagoon populations, which over the long-term could result in changes in lagoon vegetation and hydrology that are unfavorable to California red-legged frogs.

Comment: One commenter suggested that competition with tree frogs and foothill yellow-legged frogs (*Rana boylii*) may be a contributing factor in the decline of California red-legged frog.

Service Response: No evidence exists in the literature to support the theory that competition between California red-legged frogs and Pacific tree frogs or foothill yellow-legged frogs resulted in California red-legged frog declines.

Issue 3: Economic and Environmental Effects of Listing

Comment: Several commenters stated that listing of the California red-legged frog may act to limit or curtail existing uses of private property, and therefore, a takings implication assessment should be made prior to taking any final action.

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued guidelines to the Department of the Interior (Department) on implementation of the Executive Order. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, the Service might be subject to legal challenge if it considered or acted upon economic data. In these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policy makers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Act does not allow the Service to withhold a listing based on concerns regarding economic impact. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of threatened status for the California red-legged frog.

Comment: Several commenters expressed concern about an adverse effect of listing the California red-legged frog on the economy. Another commenter stated that the economic impact of listing the California red-legged frog would be devastating to an already sluggish State economy.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''* * * based solely on biological criteria and to prevent nonbiological considerations from affecting such decisions * * *'' H. R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982). As further stated in the legislative history, ''* * * economic considerations have no relevance to determinations regarding the status of species * * *'' *Id.* at 20. Because the Service is specifically precluded from considering economic impacts, either positive or negative, in a final decision on a proposed listing, the Service need not evaluate or consider the economic impacts of listing this species.

Comment: One commenter suggested that the researchers who petitioned the Service to list this species were using the Endangered Species Act as a method of furthering their personal agenda to remove livestock from public and private rangeland.

Service Response: The Service is unaware that the researchers who petitioned the Service to list the California red-legged frog have a personal agenda to remove livestock from public and private rangeland. Management of livestock on rangelands is one of many possible alternatives available to address adverse effects of grazing on California red-legged frog populations. For example, minor alterations in management practices and fencing of key riparian areas are two alternatives that preserve grazing opportunities while protecting California red-legged frogs.

Comment: Numerous commenters stated that the Service should consider the human health implications of eliminating the use of mosquitofish, draining of wetlands, and insecticides to control mosquitos.

Service Response: California red-legged frogs require still or slow-moving water with dense emergent and overhanging riparian vegetation for survival. Sites with these habitat attributes are often at great distances from urban areas and are not regularly stocked with mosquitofish or otherwise managed to control mosquitos. Therefore, at the majority of remaining sites inhabited by California red-legged frogs, mosquito control is not likely to be an issue. Where mosquitos are an issue, other biological control methods are available and may be more appropriate in California red-legged frog habitat. These methods include application of several species of bacteria (*Bacillus* sp.), and more recently, application of a fungus (*Lagenidium giganteum*), which apparently attacks and kills only mosquitos. The Service is willing to work with mosquito and vector control districts to minimize conflicts between public health and the California red-legged frog.

The Service concludes that listing the California red-legged frog as a threatened species is not likely to hinder efforts of any Mosquito and Vector Control Districts to control mosquitos in California.

Comment: One commenter stated that cessation or curtailment of water releases from reservoirs to accommodate the California red-legged frog could adversely impact other species, including several species of anadromous fish.

Service Response: If changes in reservoir release schedules are needed, the Service, in conjunction with the California Department of Fish and Game, will consider the needs of all

species that could be affected as recommendations are made.

Issue 4: Designation of Critical Habitat

Comment: Several commenters recommended that the Service designate critical habitat for the California red-legged frog so that it would be easier for interested parties to locate known and additional populations of the species, and thus, contribute to an accurate determination of the need for protection. One commenter recommended designation of critical habitat as an additional way to protect California red-legged frogs on private land. One commenter stated that an economic analysis should be conducted prior to designating critical habitat.

Service Response: The Service has determined that designation of critical habitat for the California red-legged frog would be more detrimental than beneficial to the species. Concern for the potential ''take'' of the species (as defined in the Act) through acts of vandalism has been expressed by the petitioners and other parties (see further discussion in ''Summary of Factors Affecting the Species'' (Factor B) and ''Critical Habitat'' sections, below). Revealing of the precise locations of California red-legged frog habitat, as required through critical habitat designation, would make the species more vulnerable to vandalism and unauthorized takings. The Service has determined that designation of critical habitat is not prudent for the California red-legged frog, therefore, preparation of an economic analysis is not required. However, the Service has identified recovery units for the species.

Designation of critical habitat would not necessarily provide additional protection for California red-legged frog aggregations on private land. Critical habitat legally applies only to Federal lands or activities on non-federal lands regulated, sponsored, or funded by a Federal agency. For example, designation of critical habitat on private grazing lands would not provide added protection against the impacts of grazing on California red-legged frog habitat because there is no federal nexus. Conversely, activities on private lands that are authorized, funded or carried out by a Federal agency, such as permit actions authorized under section 404 of the Clean Water Act, would require consultation with the Service if the activity was expected to adversely affect a Federally listed endangered or threatened species. This would apply regardless of whether critical habitat was designated or not.

Issue 5: National Environmental Policy Act

Comment: Several commenters stated that the proposal to list the California red-legged frog requires preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Another commenter stated that an Environmental Assessment may be necessary to determine the effects of the listing on other native species, disease-producing organisms, and humans.

Service Response: The Service need not prepare environmental assessments or environmental impacts statements pursuant to the National Environmental Policy Act (NEPA) for reasons outlined in the Federal Register on October 25, 1983 (48 FR 49244). Basically the listing of a species is exempt as a matter of law from NEPA review. Listing decisions are based on biological, not sociological or economic considerations. This view was upheld in the court case *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (1981).

Issue 6: Alternate Listing Status Recommended

Comment: Several commenters recommended that the California red-legged frog be listed as a threatened rather than an endangered species in various watersheds because measures are already being taken through Federal, State, and/or private efforts to protect California red-legged frog habitat, or because the numbers of California red-legged frogs in these watersheds are greater and the threats less than in other watersheds within the California red-legged frog's distribution. One commenter provided examples of specific streams including—(1) Sespe Creek, where 31 miles within the Forest Service's Sespe Wilderness Area have been designated as Wild and Scenic, and a portion of Sespe Creek is included within the Sespe Condor Sanctuary; and (2) Piru Creek, where flow releases have been modified to protect the Arroyo southwestern toad (*Bufo microscaphus californicus*), an endangered species.

Service Response: Additional information received during the public comment period regarding new locations of California red-legged frogs confirmed that the taxon is more widespread within its current range than previously thought. The existence of 54 new drainage localities, and some drainages with non-imminent threats, indicates that listing as a threatened rather than an endangered species is presently more appropriate for the California red-legged frog. The species is not now in danger of extinction throughout all or a significant portion of its range in the near future, however, evidence does indicate that it may become endangered.

The Service acknowledges that a portion of Sespe Creek is designated as ''Wild and Scenic'' under the Wild and Scenic River Act, 16 U.S.C. 1271 *et seq.*, and that activities such as reservoir development or channelization, may be prohibited in this area. The Service also recognizes that the portion of the creek within the Sespe Condor Sanctuary may be protected in certain ways. However, designation as such does not eliminate all potential threats to the California red-legged frog. For example, designation as Wild and Scenic does not protect against invasion of bullfrogs or other exotic predators, which are known to occur in other portions of Sespe Creek. Planned reservoir development downstream of the Wild and Scenic portion of Sespe Creek increases the likelihood that bullfrogs and introduced fishes could disperse into upstream protected portions of the creek. Also, the Wild and Scenic designation does not eliminate recreational uses of the creek, including such activities as fishing, camping, mountain biking, and horseback riding. The Sespe Creek portion of the Sespe Condor Sanctuary is not closed to recreational use by the public.

On Piru Creek, studies suggest that modified water releases from Lake Pyramid over the last four years have resulted in increased Arroyo southwestern toad populations (Cat Brown, Fish and Wildlife Service, pers. comm., 1994). No research has been conducted to document the effect of these flow releases on California red-legged frogs.

Although the status of the California red-legged frog is not uniform throughout its range, the overall picture is one of a threatened species. Recovery planning and consultations under section 7 of the Act will take into account the status of the California red-legged frog within recovery units of its range (see ''Available Conservation Measures'' section).

Comment: One commenter from Santa Barbara County recommended that the California red-legged frog be listed as a threatened species because the current range of the California red-legged frog is broad and includes most of its historic range. Another commenter thought that the current range of the California red-legged frog, which is 300 miles north to south, did not fit the definition of an endangered species.

Service Response: Section 3(20) of the Act defines a threatened species as one which is likely to become an

endangered species within the foreseeable future throughout all or a significant portion of its range. Although the current range of the California red-legged frog encompasses less than 30 percent of its historic distribution, new information received during the public comment period suggests that California red-legged frogs are more widespread within their current range than previously believed. For this reason and the fact that 17 percent of the remaining drainages occupied by frogs are not known to be imminently threatened, the Service has concluded that the California red-legged frog more appropriately meets the definition of a threatened species.

Comment: Several commenters requested that California red-legged frogs in specific drainages of the Central Coast or the entire Central Coast be exempt from endangered species status because California red-legged frogs seem to be adequately managed in this area, have not shown population declines, or have fewer exotic species problems.

Service Response: Section 3(16) the Act defines the term ''species'' to include any subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. California red-legged frog aggregations in certain drainages of the central coast of California or in the entire central coast region do not constitute distinct vertebrate population segments. The Service cannot exclude these areas and intends to list the taxon as threatened throughout its range.

Issue 7: Research and Education Needs

Comment: Several commenters recommended the following research topics be explored in relation to conservation of the California red-legged frog: (1) Seasonal utilization of patchy habitats for breeding, refugia and estivation; (2) migration timing; (3) estivation timing; (4) surveying methodology in marginal habitat; and (5) the effects of pesticide and herbicide runoff.

Service Response: These comments have been noted and will be considered during preparation of a recovery plan for the California red-legged frog.

Comment: One commenter committed to assisting the Service with cooperative research on mosquitofish/California red-legged frog interactions.

Service Response: The Service concurs fully with the need for further research in this area and acknowledges the commenter's commitment to this effort.

Comment: One commenter asked if a program could be developed that would allow for variable treatment/management of California red-legged frog habitat that was found to produce significant numbers of mosquitoes.

Service Response: Because California red-legged frog habitat is variable, it is likely that management programs for mosquitoes will also be variable and depend on the situation under review. Research into the effects of various methods of mosquito control on California red-legged frogs should aid the Service in any recovery planning undertaken for the taxon.

Comment: One commenter recommended a number of ways to educate the general public regarding listed species and elicit their support, including publishing information in trade journals, posting signs at storm drains to discourage dumping of contaminants, reevaluating the need for channelized creeks, educating the public regarding the effects of bullfrogs on native amphibians, teaching classes in grade schools, starting riparian revegetation projects, and encouraging participation of landowners by providing incentives.

Service Response: The comments have been noted. The Service welcomes recommendations from the public on how to further the purposes of the Endangered Species Act. The Service has implemented many of these recommendations in regard to other listed species and will give them due consideration in public education programs related to recovery of the California red-legged frog.

Issue 8: Systematic Relationships Between Red-legged Frog Subspecies

Comment: Several commenters questioned the Service's exclusion of the intergrade zone between the northern red-legged frog (*Rana aurora aurora*) and the California red-legged frog (*Rana aurora draytonii*) in northwestern California. They argued that this segment of the subspecies' range does not constitute a distinct population segment and, therefore, cannot be excluded from the listing package. One commenter suggested that the Service excluded this segment of the subspecies' range to make the subspecies distribution seem smaller and in greater need of protection.

Another commenter suggested that the two subspecies are actually different populations of the same species displaying morphological differences due to climatic and habitat variations. In this case, the population numbers and distribution of the species would be much greater and the need for listing nonexistent.

Service Response: The California red-legged frog is a recognized subspecies of the red-legged frog (Storer 1925, Cochran 1961, Stebbins 1985). As discussed in the background section of this rule, the range of the California red-legged frog is the vicinity of Point Reyes National Seashore, Marin County, California, coastally and from the vicinity of Redding, Shasta County, California, inland southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). Red-legged frogs found in the intergrade zone from northern Marin County to southern Del Norte County are not considered a population segment of the California red-legged frog. At this time, researchers have not assigned the intergrade zone to either subspecies.

Among other differences, red-legged frogs within the intergrade zone are distinct morphologically from either subspecies of *Rana aurora*. The California red-legged frog possesses paired vocal sacs whereas the northern red-legged frog lacks vocal sacs. Most red-legged frogs found in the intergrade zone from northern Marin County to southern Del Norte County possess only one vocal sac. Based on this pronounced morphological difference in red-legged frogs in the intergrade zone, some researchers have concluded that the California and northern red-legged frogs may be two distinct species, and that the intergrade zone represents a zone of secondary contact or hybridization between the two species (Hayes and Krempels 1986). Genetic research has been proposed to clarify systematic relationships (i.e., to determine if *R. a. aurora* and *R. a. draytonii* should be classified as two species or should remain as subspecies) and allow a more precise identification of the northern limits of the geographic distribution of the California red-legged frog (Jennings *et al.* 1992). In addition, habitat within the majority of the intergrade zone (moist evergreen/hardwood forest) is more indicative of habitat preferred by the northern red-legged frog. Thus, if the Service were to assign the intergrade zone to either subspecies based on habitat preference alone, the intergrade zone would be more appropriately placed within the range of the northern red-legged frog.

Comment: One commenter noted that the California Academy of Sciences has 66 specimens identified as *Rana aurora draytonii* that were collected from Redwood National Park in Humboldt County between 1911 and 1940. The commenter stated that more specific identification of herpetological subspecies would be needed to

determine the boundary of California red-legged frogs as far north as Del Norte County.

Service Response: The specimens referred to by the commenter were identified as *R. a. draytonii* in the 1940's based on size, skin characteristics, and prominence of dorsolateral folds as described by Camp (1917). More recent research (see Hayes and Miyamoto 1984, Hayes and Krempels 1986), has identified vocal sac condition as a distinct morphological characteristic differentiating the two subspecies. Using these new findings, the researchers who petitioned the Service to list the species have reviewed the specimens in question and found that they should have been identified as intergrades between *R. a. aurora* and *R. a. draytonii*. As discussed above, research currently underway is designed to further refine the northern boundary of the California subspecies' range.

Comment: Another commenter suggested that the listing package should only consider red-legged frogs at the species level, and, therefore, if red-legged frogs were temporarily eliminated from some part of their range in California, frogs from other areas would recolonize suitable habitat.

Service Response: Section 3(15) of the Endangered Species Act defines a species to include ''any subspecies of fish or wildlife or plants* * *''. Therefore, listing of a recognized subspecies is authorized in the Act.

The ability of red-legged frogs to migrate from one drainage to another would be dependent upon the distance, topography and habitat type through which the frogs would be required to migrate. Considering the Mediterranean climate in California, with its seasonal dryness, it is unlikely that red-legged frogs could very successfully migrate long distances to repopulate formerly occupied habitat.

Issue 9: Existing Regulatory Mechanisms

Comment: Several commenters believed that existing regulations (i.e., Clean Water Act, California Environmental Quality Act) and monitoring by several Federal agencies are providing adequate protection for the California red-legged frog, and, therefore, listing is not needed.

Service Response: The Service believes that existing regulatory mechanisms do not currently provide adequate protection for the California red-legged frog. A discussion of existing regulations can be found below in Factor D of the ''Summary of Factors Affecting the Species'' section and the ''Available Conservation Measures'' section.

Issue 10: Miscellaneous

Comment: One commenter pointed out that the Cambria Community Services District acts responsibly in protecting Santa Rosa and San Simeon Creek, including reductions in pumping during drought periods, promoting retrofit programs to reduce water usage, research into desalination alternatives and reverse osmosis treatment of wastewater, and approval of riparian habitat improvements.

Service Response: The Service acknowledges the District's efforts to protect stream flows and the natural environment of Santa Rosa and San Simeon Creeks. However, the Service has identified threats in these drainages and other drainages as well.

Comment: One commenter indicated that mosquito abatement districts have modified their mosquitofish planning protocol to carefully consider the introduction of mosquitofish in areas inhabited by listed species.

Service Response: The Service acknowledges the program modifications made by many mosquito abatement districts to protect listed species and their habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the California red-legged frog should be listed as a threatened species. Procedures found at section 4 of the Act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the California red-legged frog (*Rana aurora draytonii*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Herpetologists have noted the decline or extirpation of California red-legged frogs from the San Francisco Bay area (Sean J. Barry, University of California, Davis, *in litt.*, 1992; Robert C. Stebbins, University of California, Berkeley, *in litt.*, 1993; John S. Applegarth, herpetologist, *in litt.*, 1993; Ed Ely, herpetologist, *in litt.*, 1993), the Salinas River drainage (Lawrence E. Hunt, University of California, Santa Barbara, *in litt.*, 1993), the San Luis Obispo, Santa Barbara, and Ventura County area (Aryan I. Roest, California Polytechnic State University, San Luis Obispo, *in litt.*, 1993; Samuel S. Sweet, University of California, Santa Barbara, *in litt.*, 1993), southern California (Patrick McMonagle, herpetologist, *in litt.*, 1993; John D. Goodman, zoologist, *in litt.*, 1992; Robert B. Sanders, San Bernardino County Museum, *in litt.*, 1992; John Stephenson, U.S. Forest Service, *in litt.*, 1993; Michael C. Long, Eaton Canyon Park Nature Center, *in litt.*, 1992; Joseph F. Copp, herpetologist, *in litt.*, 1993; Glenn R. Stewart, California Polytechnic University, Pomona, *in litt.*, 1993; Robert Fisher, University of California, Davis, *in litt.*, 1993), central California (Martin R. Brittan, California State University, Sacramento, *in litt.*, 1993), and the northern and southern Sierra Nevada foothills (Jay Wright, Feather River College, Quincy, *in litt.*, 1993; Alan M. McCready, California State University, Sacramento, *in litt.*, 1992).

These observations from herpetologists and data provided by the researchers who petitioned the Service to list the species indicate that the California red-legged frog has sustained a reduction of over 70 percent in its historic geographic range in California. Large aggregations of greater than 350 adults have been documented from only four areas. These areas included Pescadero Marsh Natural Preserve in coastal San Mateo County, Point Reyes National Seashore in Marin County, canals west of San Francisco International Airport in the San Francisco Bay area (Jennings *et al.* 1992), and Rancho San Carlos in Monterey County (Jeff Froke, Rancho San Carlos, *in litt.*, 1994). The aggregation west of San Francisco International Airport is now thought to be extirpated (U.S. Fish and Wildlife Service, 1995; David Mullen, private consultant, pers. comm., 1994).

Habitat loss and alteration are the primary factors that have negatively affected the California red-legged frog throughout its range. For example, in the Central Valley of California, over 90 percent of historic wetlands have been diked, drained, or filled primarily for agricultural development and secondarily for urban development (U.S. Fish and Wildlife Service, 1978). Wetland alterations, clearing of vegetation, and water diversions that often accompany agricultural development make aquatic sites unsuitable for California red-legged frogs. Urbanization with its associated roadway, stream channelization, and large reservoir construction projects has significantly altered or eliminated California red-legged frog habitat, with the greatest impact occurring in

southern California. The majority of extant localities are isolated and fragmented remnants of larger historical populations.

Current and future urbanization poses a significant threat to the California red-legged frog. Sixty-five drainages (27 percent of the known occurrences) are associated with urbanization threats (U.S. Fish and Wildlife Service, 1995). Proposed urban developments include the East County Area Plan in Alameda County, which involves development of up to 52,000 acres, and projects currently proposed in the Ruby Hills/Arroyo Del Valle watershed and south Livermore Valley; Reservoir Canyon ponds in Santa Clara County; Alamo, Shadow, and Brookside Creeks in Contra Costa County; the Carmel River in Monterey County; and the Santa Ynez River in Santa Barbara County. In Santa Cruz County, a proposed commuter rail project linking Santa Cruz to Watsonville could increase urban development in southern portions of the county (Patricia O'Keefe, R.A.I.L.S., *in litt.*, 1994). In San Luis Obispo County, one of three counties with numerous drainages supporting California red-legged frogs, proposed residential and/or recreational development adjacent to San Simeon, Santa Rosa, San Juan, and Cambria Meadows Creeks and Estrella and Salinas Rivers could degrade or eliminate California red-legged frog habitat. Updates to area plans for the North Coast, San Luis Obispo, and Paso Robles/Atascadero areas in San Luis Obispo County propose rezoning of over 240,000 acres primarily for urban development. Between the cities of Ventura and San Luis Obispo, development already has eliminated California red-legged frogs from at least eight drainages along the coast (G. Rathbun and M. Jennings, *in litt.*, 1993).

Loss of habitat and decreases in habitat quality will occur as a result of on-site degradation of the stream environment and/or riparian corridor, or through modification of instream flow. Where streams or wetlands occur in urban areas, the quality of California red-legged frog habitat is degraded by a variety of factors. Among these factors are introduction of exotic predators, elimination of streambank vegetation, collecting, and loss of upland habitat.

Water projects, which accompany urban and agricultural growth, have had a negative effect on California red-legged frogs and their habitat. The construction of large reservoirs, such as Lake Oroville, Whiskeytown Reservoir, Don Pedro Reservoir, Lake Berryessa, San Luis Reservoir, Lake Silverwood, Lake Piru, Pyramid Lake, and Lower Otay Lake, have eliminated California red-legged frog habitat or fragmented remaining aggregations (Jennings *et al*,. 1992).

The timing and duration of water releases from reservoirs, particularly on the central California coast, can render a stream unsuitable for California red-legged frog reproduction (M. Jennings, *in litt.*, 1993) and maintain populations of exotic predators in downstream areas that would normally be dry in summer (S. Sweet, *in litt.*, 1993). Reservoirs are typically stocked with predatory species of fish and bullfrogs. These species often disperse into surrounding California red-legged frog habitat disrupting natural community dynamics. Hayes and Jennings (1988) found that California red-legged frogs generally were extirpated from downstream portions of a drainage 1 to 5 years after filling of a reservoir. In some larger drainages, however, isolated California red-legged frog populations have persisted upstream. A discussion of exotic predators appears below in Factor C: ''Disease or predation.''

A variety of proposed water projects threaten remaining California red-legged frog aggregations. Construction of major reservoirs is proposed on Los Banos Creek (Merced County), with Orestimba Creek (Stanislaus County) as an alternative reservoir site (California Department of Water Resources and the U.S. Bureau of Reclamation, 1990), and on Kellogg Creek (Contra Costa County) (Contra Costa Water District, 1993). These drainages represent three of 14 sites remaining in the Central Valley hydrographic basin with known or potential localities of California red-legged frogs. On the Salinas River along the central coast, raising the height of Salinas Dam (Santa Margarita Lake) is proposed in San Luis Obispo County. Reservoir construction at this site may allow exotic predators access to formerly secure aggregations of California red-legged frogs isolated in upper portions of the watershed (L. Hunt, *in litt.*, 1993). Other large reservoir projects proposed in California red-legged frog habitat include the Upper Nacimiento River Project and Arroyo Seco Dam Project in Monterey County. In Santa Barbara and Ventura counties, proposed dams on the Santa Ynez River, Sisquoc River, and Sespe Creek also would eliminate or degrade California red-legged frog habitat (Sam Sweet, pers. comm., 1993).

Water diversions, groundwater well development, and stock pond or small reservoir construction projects degrade or eliminate habitat. Diverting water from natural habitats to these projects disrupts the natural hydrologic regime. During periods of drought, reduced availability of water within natural drainages combined with drawdown from the impoundments, disrupts reproduction, foraging, estivation and dispersal (U.S. Fish and Wildlife Service, 1995) (see Factor E, ''Other natural or man-made factors affecting its continued existence'' below for additional discussion of the effects of drought). Proposed or existing water diversions on the central coast potentially affect the following drainages: San Simeon, Santa Rosa, Van Gordon, Villa, San Luis Obispo, Pico, and Little Pico Creeks, Arroyo del Puerta, and Arroyo Laguna in San Luis Obispo County; the Carmel and Salinas Rivers in Monterey County; and Canada del Refugio in Santa Barbara County. Most waterways on the south coast of Santa Barbara County are diverted to agriculture and other uses, leaving some completely desiccated (Brian Trautwein, Santa Barbara Urban Creeks Council, *in litt.*, 1994). Stock ponds and small reservoirs also support populations of exotic fishes and bullfrogs (G. Rathbun and M. Jennings, *in litt.*, 1993). The proposed coastal branch of the State Water Project is likely to result in a number of adverse effects to California red-legged frogs in many of the 24 areas receiving State water. These effects include, (1) altered water regimes in existing and any proposed delivery facilities of individual water districts, (2) spills, leaks, malfunctions, and operational errors that lead to introduction of exotic predators into isolated stream segments currently occupied by California red-legged frogs, and (3) indirect effects associated with expanded urbanization.

Storm damage repair and flood control maintenance on streams are current threats to California red-legged frogs. Routine flood control maintenance includes vegetation removal, herbicide spraying, shaping of banks to control erosion, and desilting of the creek, all of which degrade California red-legged frog habitat. In San Luis Obispo and Santa Barbara counties, maintenance work is planned for 14 and 11 drainages, respectively. All 25 drainages are known to be inhabited by California red-legged frogs and represent 35 percent of the occupied drainages in these two counties (U.S. Fish and Wildlife Service 1995). In Santa Barbara County, a larger channel maintenance project is proposed for a 4.5-mile stretch of the Santa Ynez River near Lompoc and a 10-mile segment of San Antonio Creek, both of which support California red-legged frog habitat.

Management of water bodies for flood control also has the potential to adversely impact California red-legged

frog localities. In San Mateo County, poorly timed releases of storm water from Horse Stable Pond at Sharp Park in February 1992, resulted in exposure and desiccation of 62 California red-legged frog egg masses (Todd Steiner, Earth Island Institute, *in litt.*, 1994). Channel maintenance at San Francisco International Airport may have contributed to extirpation of one of the four largest remaining aggregations of the California red-legged frog.

Routine road maintenance, trail development, and facilities construction activities associated with parks in or adjacent to California red-legged frog habitat can result in increased siltation in the stream. If this siltation occurs during the breeding season, asphyxiation of eggs and small California red-legged frog larvae can result. On the upper Santa Ynez River and Sespe Creek in Los Padres National Forest, Sweet (pers. comm., 1993) observed California red-legged frog egg masses smothered with silt. Construction activities in or adjacent to streams at Butano and Portola State Parks in San Mateo County; Big Basin, Wilder Ranch, and Henry Cowell State Parks in Santa Cruz County; and Mt. Diablo State Park in Contra Costa County have the potential to adversely affect California red-legged frogs inhabiting downstream reaches (Coyote Creek Riparian Station, *in litt.*, 1993).

Placer mining may threaten California red-legged frog habitat. Jennings (pers. comm., 1994) observed heavy siltation in late spring and summer in portions of Piru Creek known to support California red-legged frogs. The siltation resulted from upstream gold mining. Deep holes in streams created by instream placer mining also may provide habitat for exotic predatory fish (Jennings, pers. comm., 1994). Creeks, streams and rivers are open to suction dredging throughout the year in 13 of 22 counties within the current range of the California red-legged frog (State of California 1994).

Road-killed California red-legged frogs have been documented at several locations in San Mateo and Santa Cruz Counties (Coyote Creek Riparian Station, *in litt.*, 1993; Mike Westphal, Coyote Creek Riparian Station, *in litt.*, 1995). Road kills may deplete frog aggregations in borderline habitat and otherwise protected areas. Where roads cross or lie adjacent to California red-legged frog habitat, they may act as barriers to seasonal movement and dispersal.

Livestock grazing is another form of habitat alteration that is contributing to declines in the California red-legged frog. Numerous studies, summarized in Behnke and Raleigh (1978) and Kauffman and Krueger (1984), have shown that livestock grazing negatively affects riparian habitat. Cattle have an adverse affect on riparian and other wetland habitats because they tend to concentrate in these areas, particularly during the dry season (Marlow and Pogacnik 1985). Cattle trample and eat emergent and riparian vegetation, often eliminating or severely reducing plant cover (Gunderson 1968, Duff 1979). Loss of riparian vegetation results in increased water temperatures (Van Velson 1979), which encourage bullfrog reproduction. Riparian vegetation loss due to cattle grazing includes the loss of willows (Duff 1979), which are associated with the highest densities of California red-legged frogs (Hayes and Jennings 1988, Jennings 1988b). Cattle grazing also results in increased erosion in the watershed (Lusby 1970, Winegar 1977), which accelerates the sedimentation of deep pools (Gunderson 1968) used by California red-legged frogs and adversely affects aquatic invertebrates (Cordone and Kelley 1961). Aquatic invertebrates are common prey items of California red-legged frogs.

Behnke and Zarn (1976) identified livestock grazing as the greatest threat to the integrity of stream habitat in the western United States. Numerous symposia and publications have documented the detrimental effects of livestock grazing on streams and riparian habitats (Johnson and Jones 1977; Meehan and Platts 1978; Behnke and Raleigh 1979; Bowers *et al.* 1979; Cope 1979; Platts 1981; Ohmart and Anderson 1982 and 1986; Peek and Dalke 1982; Kauffman *et al.* 1983; Menke 1983; Kauffman and Krueger 1984; Johnson *et al.* 1985; GAO 1988; Clary and Webster 1989; Gresswell *et al.* 1989; Kinch 1989; Minshall *et al.* 1989; Chaney *et al.* 1990 and 1993). These effects include nutrient loading, reduction of shade and cover with resultant increases in water temperature, increased intermittent flows, changes in stream channel morphology, and the addition of sediment due to bank degradation and off-site soil erosion. Indirect effects of increased water temperatures can be lethal to aquatic species and include: creating a more favorable environment for introduced species, changing the food chain, degrading water quality through decreased dissolved oxygen, increased production of algae, and increased pH and ammonia.

Various studies have shown that water temperatures have been reduced when streambank vegetative cover is protected from grazing. Storch (1979) found that daily fluctuations of water temperatures in late August and early September averaged 27° F outside an exclosure on Camp Creek, Oregon that was ungrazed for 10 years, compared to 13° F inside the exclosure. Also, maximum water temperatures outside the exclosure averaged 11° F higher than inside the exclosure. Van Velson (1979) reported that average water temperatures in Otter Creek, Nebraska, decreased 3° F after livestock were excluded for 1 year.

Grazing effects are not limited to riparian areas. Improper grazing of upland vegetation can expose soils to erosive impacts of rain drops, reduce water infiltration, and accelerate runoff. This can erode topsoil and cut rills and gullies, concentrating runoff, deepening gullies, lowering water tables, and increasing sediment production (Chaney *et al.* 1993). Sediment introduced into streams can alter primary productivity and food supply, fill interstitial spaces in stream bed material, impeding water flow, reducing dissolved oxygen levels, and restricting waste removal (Chapman 1988). Suspended sediments reduce light penetration to plants and reduce oxygen carrying capacity of the water (Ohmart and Anderson 1982). Reduction in photosynthesis and primary production decreases productivity of the entire ecosystem (Minshall *et al.* 1989).

Livestock grazing can cause a nutrient loading problem (due to urination and defecation) in areas where cattle are concentrated near the water (Doran *et al.* 1981), but in other areas it can reduce nutrients through removal of riparian vegetation (Fisher 1972). Riparian vegetation provides organic material for approximately 50 percent of a stream's nutrient energy (Cummins 1974). Detritus from such plants is a principal source of food for aquatic invertebrates (Minshall 1967; Meehan *et al.* 1977). Streamside vegetation also provides habitat for terrestrial insects, another important dietary component for other aquatic or riparian associated species.

Jennings *et al.* (1992) found livestock grazing to occur at all known historic locations of the California red-legged frog in the Central Valley hydrographic basin. Livestock grazing also has been implicated as a contributing factor in the decline and disappearance of California red-legged frogs from the lower Salinas River (L. Hunt, *in litt.*, 1993) and the San Francisco peninsula (S. Barry, *in litt.*, 1992). Two of the 14 remaining aggregations of California red-legged frogs in the Central Valley hydrographic basin (Corral Hollow Ecological Reserve and Frank Raines Regional Park) are threatened by

sedimentation of aquatic habitats either directly or indirectly caused by livestock grazing and off-road vehicle use (Jennings *et al.* 1992). Galen Rathbun (National Biological Service, pers. comm., 1993) reports that grazing is adversely altering California red-legged frog habitat on Pico, Van Gordon, San Simeon, Santa Rosa, Cambria Meadows, and Cayucos Creeks in San Luis Obispo County. Grazing practices can, however, be modified to minimize impacts to California red-legged frogs. Five-fold increases in California red-legged frog populations on Rancho San Carlos in Monterey County may be attributable in part to modifications of grazing programs (J. Froke, *in litt.*, 1994).

In addition to cattle, feral pigs (*Sus scrofa*) also disturb the riparian zone through their rooting, wallowing and foraging behavior in the shallow margins of water bodies. Feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and cause erosion. At Pinnacles National Monument, soil compaction and possible disturbance of frog eggs caused by feral pigs have been noted in California red-legged frog habitat (Stanley Albright, National Park Service, *in litt.*, 1994).

Off-road vehicle use adversely affects California red-legged frogs in ways similar to livestock grazing and feral pig disturbance. Off-road vehicles damage riparian vegetation, increase siltation in pools, disturb the water in stream channels and crush eggs, larvae, juveniles, and adults. California red-legged frogs were eliminated in part by off-road vehicle activities at the Mojave River above Hesperia, at Rincon Station on the west fork of the San Gabriel River, and in Piru Creek above Pyramid Lake (M. Jennings, pers. comm., 1993).

Heavy recreational use of parks (e.g., fishing, hiking, exploring) also can degrade habitat for the California red-legged frog. At Big Basin Redwood Park in Santa Cruz County, heavy recreational use may have contributed to the disappearance of California red-legged frogs from Opal Creek (Coyote Creek Riparian Station, *in litt.*, 1993).

Timber harvest threatens California red-legged frogs through loss of riparian vegetation and increased erosion in the watershed, which fills pools with sediment and smothers egg masses. In Santa Cruz County, timber harvest is proposed adjacent to Adams Creek (Celia Scott, private citizen, pers. comm., 1993), Whitehouse Creek (U.S. Fish and Wildlife Service 1995) and occurs periodically on a tributary of Blooms Creek (Coyote Creek Riparian Station, *in litt.*, 1993). The proposed timber harvests would occur in three of 18 streams in the County that support California red-legged frogs. In Pescadero Creek at Portola State Park (San Mateo County), erosion and siltation caused by severe winter storms and upstream logging operations may have been the cause of the disappearance of California red-legged frogs from this portion of the stream (Coyote Creek Riparian Station, *in litt.*, 1993).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Records of harvesting California red-legged frogs for human consumption date back to an account by Lockington (1879) of the commercial harvest of this species for San Francisco fish markets. From 1890 to 1900, the California red-legged frog supported a significant commercial harvest (Smith 1895) of about 80,000 frogs annually (Jennings and Hayes 1984). Counties surrounding San Francisco Bay provided the bulk of the frog harvest in the early to mid 1890s, with the Sacramento and San Joaquin Valleys increasing in importance by the end of the decade (Chamberlain 1898, Jennings and Hayes 1985). By 1900, harvest figures for California red-legged frogs fell dramatically, indicating that overharvesting may have occurred. Jennings and Hayes (1985) hypothesized that this rapid decline in the California red-legged frog population was the result of selective harvesting of the larger females. Introduction of the bullfrog in California in 1896 was probably in response to the dwindling California red-legged frog population (Jennings and Hayes 1985). Continued harvesting of California red-legged frogs for food by local individuals has been reported for the Central Coast region (Coyote Creek Riparian Station, *in litt.*, 1993). California red-legged frogs reportedly taste better than bullfrogs, a statement first made by Dickerson (1906).

Prior to 1950, California red-legged frogs were used sporadically for research in high schools and universities. At present, the California red-legged frog is available commercially from suppliers located outside California in the pet trade. Because the State of California prohibits possession of wild California red-legged frogs without a permit, frogs sold in the pet trade presumably are reared in captivity (M. Jennings, pers. comm., 1993).

C. Disease or predation. There have been no documented instances of disease adversely affecting the California red-legged frog.

Few data are available on the effect of native predators on the California red-legged frog. Bitterns (*Botaurus lentiginosus*) and black-crowned night herons (*Nycticorax nycticorax*) are likely predators of adult frogs (Jennings and Hayes 1990). Juvenile California red-legged frogs, which are more active diurnally and less wary than adults, may be more susceptible to predation by diurnal predators, such as the great blue heron (*Ardea herodias*) and several species of garter snakes (*Thamnophis* spp.) (Fitch 1940, Fox 1952), including the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) (Barry 1978, Wharton *et al.* 1986). Recent postmetamorphs also may be particularly vulnerable to predation by garter snakes, as was found in other species of ranid frogs by Arnold and Wassersug (1978). Raccoons (*Procyon lotor*), which are abundant in urban settings, were the likely predator of eight radio-tagged California red-legged frogs in the riparian corridor of Pico and San Simeon Creeks in San Luis Obispo County (Rathbun, *in litt.*, 1994). Other possible, but undocumented mammalian predators include striped skunks (*Mephitis mephitis*), spotted skunks (*Spilogale putorius*), and red fox (*Vulpes fulva*). Larvae may be preyed upon by aquatic beetles and damsel fly naiads (Karl Malamud-Roam, Contra Costa County Mosquito and Vector Control District, *in litt.*, 1994).

Introduced predators of particular concern are the bullfrog, red swamp crayfish (*Procambarus clarkii*), signal crayfish (*Pacifastacus leniusculus*), and several species of fish, including bass, catfish (*Ictalurus* spp.), sunfish, and mosquitofish (Moyle 1973; Hayes and Jennings 1986, 1988). All species were introduced into California in the late 1800s and early 1900s, and through range expansions, reintroductions, and transplants have become established throughout most of the State (Riegel 1959, Bury and Luckenbach 1976, Moyle 1976).

Several researchers in central California have noted the decline and eventual disappearance of California red-legged frogs once bullfrogs become established at the same site (L. Hunt, in litt, 1993; S. Barry, *in litt.*, 1992; S. Sweet, *in litt.*, 1993). Joseph DiDonato (East Bay Regional Park District, pers. comm., 1994) has observed the disappearance of California red-legged frogs from Pleasanton Ridge in Alameda County within the last ten years. Today, all former California red-legged frog habitat on Pleasanton Ridge is occupied by bullfrogs. Moyle (1973) attributed the disappearance of California red-legged frogs from the San Joaquin Valley and Sierran foothill region primarily to a combination of bullfrog predation and

competition. All sites in the Sierra Nevada foothills that supported California red-legged frogs in the 1970s now are inhabited by bullfrogs (M. Jennings, *in litt.*, 1993). Over the last decade, Jennings (*in litt.*, 1993) has observed bullfrogs moving upstream and/or downstream into formerly pristine California red-legged frog habitat in a number of drainages, including streams in Ventura, Santa Barbara, San Luis Obispo, Merced, Stanislaus, and San Mateo counties. Bullfrogs are introduced into drainages by stocking of reservoirs and stock ponds, dispersal and colonization, conveyance of project water from other streams inhabited by these exotics, and releases by individuals. At The Nature Conservancy's Santa Rosa Plateau Reserve in Riverside County (the only site south of the Santa Clara River drainage supporting California red-legged frogs), a docent found a school teacher attempting to introduce bullfrog tadpoles into the preserve in the 1980s (M. Jennings, *in litt.*, 1993). Additional bullfrogs were removed from the preserve in 1989 after apparent introductions from a nearby frog jumping contest (M. Jennings, *in litt.*, 1994). Once established, it is extremely difficult to eliminate bullfrogs (M. Jennings, *in litt.*, 1993; Cecil Schwalbe, National Park Service, Tuscon, Arizona, pers. comm., 1993; Frank Slavens, Woodland Park Zoological Gardens, Seattle, Washington, pers. comm., 1993). Over 60 percent of the streams or drainages currently known to support California red-legged frogs also are inhabited by bullfrogs, either in association with California red-legged frogs or in other portions of the drainage (U.S. Fish and Wildlife Service 1995). Based on documented rates of local extinction, the Service concludes that eventually California red-legged frogs will be locally extirpated from these 149 streams.

Bullfrogs prey on California red-legged frogs (S. Sweet, *in litt.*, 1993), other ranid frogs (Twedt 1993) and other amphibians and aquatic reptiles (Schwalbe and Rosen 1988). Twedt (1993) documented four juvenile northern red-legged frogs among the contents of 22 adult bullfrog stomachs. He also found a subadult bullfrog in one of the adult bullfrog stomachs. This prey item was between the size of an adult male (approximately 80 mm (3.1 in.)) and adult female (approximately 85 mm (3.3 in.)) red-legged frog, indicating that bullfrogs could prey on subadult red-legged frogs. Stuart and Painter (1993) found evidence of cannibalistic behavior in bullfrogs. A stomach content analysis revealed 87 percent of total volume by weight was composed of newly-metamorphosed and larval Rana. Bullfrogs may have a competitive advantage over California red-legged frogs because of their (1) larger size, (2) generalized food habits (Bury and Whelan 1984), (3) extended breeding season (Storer 1933), which allows for production of two clutches of up to 20,000 eggs during a breeding season (Emlen 1977), and (4) larvae being unpalatable to predatory fish (Kruse and Francis 1977). Bullfrogs also interfere with red-legged frog reproduction. Several researchers have noted male red-legged frogs in amplexus with (mounted on) both male and female bullfrogs (Jennings and Hayes 1990; Twedt 1993; M. Jennings, *in litt.*, 1993; Stebbins *in litt.*, 1993). However, the extent to which bullfrog predation, competition, and reproductive interference adversely affects red-legged frogs has not been studied in the field (Hayes and Jennings 1986). Habitat alterations, including removal of riparian or aquatic vegetation, reduced stream flows, and sedimentation of pools, often provide conditions detrimental to red-legged frogs but favorable to bullfrogs (Hayes and Jennings 1986; Jennings 1988b; Jennings, pers. comm., 1993).

Hayes and Jennings (1986, 1988) found a negative correlation between the abundance of introduced fish species and California red-legged frogs. These authors noted that aquatic sites where introduced fishes were abundant rarely had native ranids, and when present, ranid populations were small. A similar negative correlation was reported by Hunt (*in litt.*, 1993) for California red-legged frogs in the Salinas River drainage, by DiDonato (*in litt.*, 1994) on East Bay Regional Park District properties in the San Francisco Bay area, by Shaffer (*in litt.*, 1994) for the inner coast range, and by Moyle (1973) for the foothill yellow-legged frog. These references suggest that the observed negative correlation between California red-legged frogs and non-native fish is a general principal. Of 32 streams examined by Hayes and Jennings (1988), introduced fishes were found in 44 percent.

Results of a recent study in artificial ponds showed that mosquitofish and bluegill (*Lepomis macrochirus*) were significant predators of California red-legged frog larvae (Schmieder and Nauman 1994). However, California red-legged frogs have been found in association with mosquitofish in Corral Hollow Creek (Alameda and San Joaquin counties) (T. Strange, pers. comm., 1994) and in three waterbodies on East Bay Regional Park properties in Contra Costa County (K. Swaim, *in litt.*, 1994). Malamud-Roam (*in litt*, 1994) reported that mosquitofish occur in at least four streams in Contra Costa County known to support California red-legged frogs. Mosquitofish also may compete with California red-legged frogs by consuming aquatic insects that are potential food sources for postmetamorphic frogs. Mosquitofish have become established statewide and are stocked routinely by mosquito abatement districts as a mosquito control measure (Moyle 1976).

D. The inadequacy of existing regulatory mechanisms. Although the California red-legged frog is classified as a ''Species of Special Concern'' by the State of California (Steinhart 1990) and may not be taken without an approved scientific collecting permit, this designation provides no special, legally mandated protection of the species and its habitat. In 1972, the California Fish and Game Commission amended its sport fishing regulations to prohibit take or possession of California red-legged frogs (Bury and Stewart 1973). However, because of the rarity of the California red-legged frog and similarity to the more common bullfrog, protection of this taxon by State wardens and rangers may be compromised (Coyote Creek Riparian Station, *in litt.*, 1993).

Section 1603 of the California Fish and Game Code authorizes the Department of Fish and Game (CDFG) to regulate streambed alteration. The Department must be notified and approve any work that substantially diverts, alters, or obstructs the natural flow or substantially changes the bed, channel or banks of any river, stream, or lake. If an existing fish or wildlife resource may be substantially adversely affected by a project, CDFG must submit proposals to protect the species within 30 days. However, if the Department does not respond within 30 days of notification, the applicant may proceed with the work.

Section 404 of the Clean Water Act is the primary Federal law that potentially provides some protection for aquatic habitats of the California red-legged frog, if the habitats are determined by the U.S. Army Corps of Engineers (Corps) to be jurisdictional areas (i.e., waters of the United States). Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of wetlands above the headwaters (i.e., streams with less than five cubic feet per second (cfs) mean annual flow) or for isolated waters, unless a listed species may be adversely affected. Many aggregations of

California red-legged frogs occur in isolated wetlands and coastal streams that may have mean annual flows less than five cfs. Individual permits, which are subject to more extensive review, could be required for projects that have more than minimal impacts to waters of the United States. The Clean Water Act does not afford any special protection for candidate species. However, when the California red-legged frog is listed, the Corps will be required by section 7 of the Act to consult and obtain the concurrence of the Service prior to the authorization of any section 404 permit affecting California red-legged frog habitat.

Additionally and equally important, the upland habitats adjacent to riparian zones are not provided any protection by Section 404 of the Clean Water Act. Upland areas provide estivation and dispersal habitats for this species.

Federal lands, including those of the Forest Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, and Department of Defense, encompass approximately 10 percent of the current known range of the California red-legged frog. Multiple land use management, as currently practiced by the Forest Service, Bureau of Land Management, and National Park Service, does not provide long-term protection for the California red-legged frog. State, County, and Regional Park lands provide some protection from some threats, however, these parks are managed for multiple uses.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect a Federally listed species. However, project proponents are not required to avoid impacts to non-listed species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory. The Service is aware of a proposed recreational development in Santa Cruz County undergoing environmental review that is expected to extirpate an estimated 10 percent of the total remaining numbers of the California red-legged frog (Westphal *in litt.* 1995).

The California Coastal Act regulates the approval of developments within the costal zone. Although a significant slowing in wetland losses has occurred, the continued loss and degradation of coastal wetlands since the California Coastal Act was enacted in 1974 attests to the limitations of this legislation.

E. Other natural or man-made factors affecting its continued existence. Six consecutive years of drought (1986–1992) in California severely affected remaining California red-legged frogs in the Sierran foothills. Many sites in intermittent streams that held California red-legged frogs before the drought were completely dry during field surveys conducted between 1985 to 1992 (Jennings *et al.* 1992). Sites still holding pools of water had water levels so low that access by predators was enhanced. Livestock grazing at many sites exacerbated effects of the drought by limiting or preventing riparian habitat regeneration (Jennings *et al.* 1992). Long-term survival of California red-legged frogs may be compromised by the elimination of refuge areas during times of the year when the stream is dry (Rathbun, *in litt.*, 1994). However, California red-legged frog populations are undoubtedly capable of recovering from drought, provided other factors have not irreparably degraded their habitat, or California red-legged frogs have not been completely extirpated from the drainage.

Drought also may play a role in decreased California red-legged frog reproduction where frogs occur in coastal lagoons. High salinities in the Pescadero Marsh (San Mateo County) have been attributed to drought conditions in the watershed. At the Pescadero Marsh Natural Preserve, Jennings and Hayes (1990) found many dead egg masses in a portion of the marsh that were killed by excessive (>4.5 parts per thousand) salinity levels. Rathbun *et al.* (1991) speculated that the absence of California red-legged frogs in lower Santa Rosa Creek and lagoon in San Luis Obispo County was due to long-term drought exacerbated by instream flow withdrawals. Since the end of the drought California red-legged frog numbers reportedly have increased in lower Santa Rosa Creek (Rathbun *in litt.* 1994; G. Schmitt, United Residential Lot Owners of Cambria, Inc. *in litt.* 1994) probably as a result of increased rainfall in the winter of 1992–1993. Increased salinities were recorded in several other coastal lagoons during the drought years (C. Swift and K. Worcester, pers. comm. *in* Jennings *et al.* 1992). Increased salinity could also result from periodic overtopping of the beach bar during high tides or by storm waves (D. Asquith, private consultant, *in litt.* 1994). In 1993, Jennings (pers. comm., 1993) reported the loss of California red-legged frog egg masses from increased salinity and unusual flooding in Arroyo Laguna in San Luis Obispo County. Because significant numbers of California red-legged frogs occur in coastal lagoons on the central California coast, drought has the potential to severely reduce production of California red-legged frogs over a significant portion of their remaining range.

The overall effect of contaminants on California red-legged frogs has not been studied. Only one incident of California red-legged frog mortality is known from a diesel and gasoline spill in a tributary of Blooms Creek (Santa Cruz County) (Coyote Creek Riparian Station, *in litt.*, 1993).

Periodic wildfires may adversely affect California red-legged frogs by causing direct mortality, destroying streamside vegetation, or eliminating vegetation that protects the watershed. The 1991 Lions Fire on upper Sespe Creek in the Los Padres National Forest destroyed known California red-legged frog habitat (S. Sweet, pers. comm., 1993). Following the fire, extensive erosion in the watershed also negatively affected California red-legged frogs and their habitat (S. Sweet, pers. comm., 1993).

Extensive flooding has been cited by Jennings and Hayes (1994a) as a significant contributing factor in the extirpation of the California red-legged frog from desert drainages of southern California. For example, in the Mojave River drainage, no verifiable records or sightings exist of California red-legged frogs after 1968 (Jennings and Hayes 1994a). The disappearance of this species from the drainage coincided with a catastrophic flood event in the Mojave River in the winters of 1968 and 1969. Extensive flooding in other portions of the California red-legged frog range may have combined with other factors to eliminate California red-legged frog aggregations (Richard Seymour, Coyote Creek Riparian Station, *in litt.*, 1993; D. Martin, pers. comm., 1994).

A considerable amount of occupied California red-legged habitat exists in the form of isolated patches along stream courses. These patches of suitable habitat represent mere remnants of a much larger historical habitat that once covered whole drainages. Fragments of formerly extensive populations of California red-legged frogs are now isolated from other populations. Populations isolated in habitat fragments are vulnerable to extinction through random environmental events or anthropogenic catastrophes. With only three of 243 known creeks or drainages supporting populations of over 350 adults, all remaining occurrences are considered vulnerable to these threats. Once a local

extinction event occurs in an isolated habitat fragment, the opportunity for recolonization from a source population is reduced. Thus, local extinctions via stochastic processes, coupled with habitat fragmentation may represent a substantial threat to the continued existence of the California red-legged frog over much of its range.

The Service has carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the California red-legged frog in determining to make this final decision. Based on this evaluation, the preferred action is to list the California red-legged frog (*Rana aurora draytonii*) as threatened. This taxon has been extirpated from 70 percent of its former range. Although California red-legged frogs are now known to be found in more locations within their present range than previously thought, factors adversely affecting the California red-legged frog are known to exist in 83 percent of the drainages supporting the taxon (U.S. Fish and Wildlife Service 1995). These factors include but are not limited to (1) urban encroachment, (2) construction of large and small reservoirs, water diversions and well development, (3) flood control maintenance, (4) road maintenance, (5) placer mining, (6) livestock grazing and feral pigs, (7) off-road vehicle use, and (8) introduction or presence of exotic predators and competitors. The remaining 17 percent of occupied drainages, the majority located in Monterey, Santa Barbara, and San Luis Obispo counties, currently are not known to be subject to the above threats. The California red-legged frog, therefore, more appropriately fits the definition of a threatened species. For the reasons discussed below, critical habitat has not been proposed.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California red-legged frog at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the ''Summary of Factors Affecting the Species'' section, the California red-legged frog has been and continues to be threatened by taking, an activity difficult to control. Listing of the frog may result in an increase in the threat of vandalism, a concern expressed by the petitioners and other experts (M. Jennings, S. Sweet, pers. comm., 1993; D. Martin, pers. comm., 1994). California red-legged frogs occur in isolated and fragmented wetland habitat on private property and are at risk from vandalism. Publication of specific localities, which would be required in proposing critical habitat, would reveal precise locality data and thereby make the species more vulnerable to acts of vandalism, and increase the difficulties of enforcement. Martin (pers. comm., 1994) has observed acts of vandalism by private landowners once they learned of the presence of Yosemite toads (*Bufo canorus*), on their property. The Yosemite toad is a species of concern to the Service (former category 2 species, 59 FR 58995).

In addition, a significant market exists in California for frog meat, with bullfrogs as the primary species sold. In 1993, the California Department of Fish and Game arrested a number of individuals involved in illegal collection and sale of large numbers of bullfrogs to San Francisco fish markets (California Department of Fish and Game 1993). To the untrained eye, the California red-legged frog looks very similar to a bullfrog and could be accidentally taken for the market. California red-legged frogs also could be taken intentionally as they are reported to be more palatable (Coyote Creek Riparian Station, *in litt.*, 1993; Jennings, pers. comm., 1994). The California red-legged frog would be more vulnerable to collection for market consumption if precise locality data were published for this species. Protection of California red-legged frog habitat will be addressed in the recovery process and through the section 7 consultation process. Therefore, due to the serious potential for increased, unauthorized take, the Service has determined that designation of critical habitat for the California red-legged frog is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies that may be involved as a result of this final rule are the Bureau of Reclamation, Bureau of Land Management, National Park Service, Forest Service, and the Departments of the Army, Navy and Air Force. At several parks, the National Park Service has conducted or is planning to conduct status surveys for California red-legged frogs (Daphne A. Hatch, National Park Service, *in litt.*, 1993; James Sleznick, National Park Service, *in litt.*, 1992;

Gary Fellers, National Park Service, pers. comm., 1993). The Forest Service has conducted and has ongoing amphibian surveys in many National Forests within the historic range of the California red-legged frog (J. Stephenson, pers. comm., 1993; D. Martin, pers. comm., 1993; Maeton Freel, U.S. Forest Service, pers. comm., 1994). In Los Padres National Forest, the Forest Service, in a cooperative effort with other Federal and State agencies, has altered flow regimes in Piru Creek between Lake Pyramid Lake and Lake Piru to benefit the endangered arroyo southwestern toad. Although no specific studies have been done, these flow regime changes also may benefit the California red-legged frog (Frederick Gientke, United Water Conservation District, *in litt.*, 1994). The Forest Service has also designated more than 31 miles of Sespe Creek in Los Padres National Forest as ''Wild and Scenic'' under the National Wild and Scenic Rivers Act of 1968.

The Contra Costa Water District is constructing a large reservoir construction project (Los Vaqueros Reservoir) on Kellogg Creek, Contra Costa County (Contra Costa Water District 1993). The Bureau of Reclamation's role in this project is to amend water service contracts and modify water rights to facilitate project construction (Penny Howard, U.S. Bureau of Reclamation, *in litt.*, 1994). A mitigation and monitoring program is proposed to compensate for California red-legged frog habitat losses at Los Vaqueros. The mitigation plan includes a bullfrog and exotic fish control program to be carried out for the life of the reservoir project (Contra Costa Water District 1993). The potential for success of the mitigation plan is unknown. In addition, Bureau of Reclamation projects, including small loan projects in Monterey County, the Cachuma project in Santa Barbara County, the San Felipe project in San Benito and Santa Clara counties, and the Solano project in Solano County, involve water contract renewals as well as road maintenance activities and grazing leases, all of which may affect California red-legged frogs. The U.S. Army Corps of Engineers would be involved in many of these projects through their permitting authority under section 404 of the Clean Water Act.

Any of the above mentioned Federal agencies would be required to consult with the Service if any action they fund, authorize, or carry out may affect the California red-legged frog. To the extent that their habitats overlap in lagoon areas, efforts made to conserve and recover the tidewater goby (*Eucyclogobius newberryi*), a Federally listed endangered species, may also help to conserve and recover the California red-legged frog.

The Service is currently involved in the development of two Habitat Conservation Plans (HCP's) that could potentially protect three localities of California red-legged frogs. The Kern County Valley Floor HCP will protect a minimum of 75 percent of the existing California red-legged frog habitat in the Bitterwater Creek drainage. The San Joaquin County multispecies HCP may also protect two localities, Corral Hollow Creek and Lone Tree Creek. Although the development of these HCP's will not preclude the need to list the California red-legged frog, these plans, if implemented, will protect habitat for the taxon.

The Ventura Field Office is assisting with the Santa Clara River Enhancement and Management Plan, which is progressing but is not finalized at this time. A similar plan for Rancho San Carlos (in the Carmel River drainage) is also underway. Early planning efforts are beginning for the Ventura and Santa Ynez rivers. None of these planning efforts preclude the need to list the species, but will provide future protection of habitat for the species.

One known California red-legged frog locality in Riverside County and any newly discovered localities in the historic range of the species could be protected by ongoing ecosystem-based planning efforts in southern California. In 1991, the State of California established the Natural Communities Conservation Planning (NCCP) Program to address conservation needs of natural ecosystems throughout the State. The initial focus of the program is the coastal sage scrub community in southern California, however, riparian habitats will also be addressed. Several regional plans, including the Multi-species Conservation Plan (MSCP) and the Multi-habitat Conservation Plan (MHCP) of San Diego County, the Southern and Central Coastal Subregional NCCP/Habitat Conservation Plans (Southern/Central/Coastal NCCP) of Orange County, and the Riverside County Stephens Kangaroo rat HCP and San Bernardino County MSCP are under development by a consortium of county and municipal governments and other parties, including the California Department of Fish and Game and the Service. Though no plans have been completed to date, protection could be provided if the California red-legged frog occurs in any of the planning areas. The one known extant population occurs on the Santa Rosa Plateau Reserve managed by The Nature Conservancy.

The Service establishes the following recovery units within the historical range of the California red-legged frog: (1) The western foothills and Sierran foothills to 5,000 feet in elevation in the Central Valley Hydrographic Basin; (2) the central coast ranges from San Mateo and Santa Clara counties south to Ventura and Los Angeles counties; (3) the San Francisco Bay/Suisun Bay hydrologic basin; (4) southern California, south of the Tehachapi Mountains; and (5) the northern coast range in Marin and Sonoma counties. These five units are essential to the survival and recovery of the California red-legged frog. Designation of recovery units assists the Service and other agencies in identifying priority areas for conservation planning under the consultation (section 7) and recovery (section 4) programs.

The Act and implementing regulations found at 50 CFR 17.32 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. With respect to the California red-legged frog, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following

actions will not result in a violation of section 9:

(1) Road-kills or injuries caused by vehicles operated lawfully on designated public roads;

(2) Light to moderate carefully managed livestock grazing that prevents or minimizes the excessive trampling of riparian and wetland habitat;

(3) Possession of legally acquired California red-legged frogs;

(4) Unintentional hooking of a frog or tadpole during otherwise lawful engagement in fishing, and;

(5) Federally approved projects that involve activities such as, discharge of fill material, draining, ditching, tiling, pond construction stream channelization or diversion, or alteration of surface or ground water into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the California red-legged frog and result in ''take'', include, but are not limited to:

(1) Unauthorized collecting or handling of the species;

(2) Introduction of exotic species such as fish or other species of frogs directly into, or within dispersal distance of, known California red-legged frog habitat;

(3) Unauthorized destruction/alteration of the species' habitat such as discharge of fill material, draining, ditching, tiling, pond construction, diversion or alteration of stream channels or surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), operation of any vehicles within the stream channel;

(4) Violation of discharge permits;

(5) Burning, cutting or mowing of wetland or riparian vegetation, if conducted in an untimely or inappropriate manner (e.g., when California red-legged frogs would be killed or injured, or their occupied habitat would be degraded or rendered unsuitable);

(6) Pesticide applications in violation of label restrictions;

(7) Discharges or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil and gasoline) into waters, or riparian and upland habitats supporting the species;

(8) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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(a) 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

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are Karen J. Miller, Alison Willy, Sheila Larsen, and Steven Morey, Sacramento Field Office (see **ADDRESSES** section), telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for 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, 10080 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 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						
AMPHIBIANS							
*	*	*	*	*	*		*
Frog, California red-legged.	*Rana aurora draytonii*	U.S.A. (CA).	Entire (excluding Del Norte, Humboldt, Trinity, & Mendocino Cos., CA; Glenn, Lake, & Sonoma Cos., CA, west of the Central Valley Hydrologic Basin; Sonoma & Marin Cos., CA, west & north of San Francisco Bay drainages and Walker Creek drainage; and NV).	T		NA	NA
*	*	*	*	*	*		*

Dated: May 17, 1996

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 96–12901 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 951221305–6038–02; I.D. 020296B]

Reef Fish Fishery of the Gulf of Mexico; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to emergency interim rule.

SUMMARY: This document corrects the delay of effective date in an emergency interim rule published on February 29, 1996 (61 FR 7751). The emergency interim rule delayed indefinitely the effective date for implementation of the red snapper Individual Transferable Quota (ITQ) system for the Gulf of Mexico, previously scheduled to begin April 1, 1996.

EFFECTIVE DATE: The delay of effective date published February 29, 1996 (61 FR 7751) for amendments originally published on November 29, 1995 (60 FR 61202) is corrected as of February 23, 1996, to extend through May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A, Sadler, Fishery Management Specialist, Southeast Regional Office, 813–570–5305.

SUPPLEMENTARY INFORMATION:

Background

In issuing an emergency interim rule on February 29, 1996, NMFS inadvertently indicated that the scheduled April 1, 1996, effective date for the Gulf of Mexico red snapper ITQ system, implemented under FMP Amendment 8 (60 FR 61200, November 29, 1995), would be delayed indefinitely. Because an emergency interim rule issued under section 305(c) of the Magnuson Fishery Conservation and Management Act can amend a fishery management plan or plan amendment and its implementing rule only for the emergency period (limited to 90 days), the indefinite delay was in error.

Need for Correction

Accordingly, this action corrects the emergency interim rule to specify the correct ending date for the delay in the effective date for the final rule implementing the ITQ system. As published, the effective date section and amendatory instruction 2 are incorrect and need to be changed.

Correction of Publication

The publication on February 29, 1995, of the emergency interim rule (I.D. 020296B), which was the subject of FR DOC. 96–4432, is corrected as follows:

On page 7751, in the third column, under the preamble caption **EFFECTIVE DATES**, in the last paragraph, the phrase ''are delayed indefinitely.'' is corrected to read ''is delayed through May 29, 1996.''

On page 7753, in the third column, on the last line of the introductory text of the amendatory instruction 2, the word ''indefinitely'' is corrected to read ''through May 29, 1996.''

Dated: May 15, 1996.

Richard H. Schaefer,

Acting, Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–12786 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

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

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–011]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for annual fireworks displays that occur throughout the First Coast Guard District. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch sites and to ensure the safety of life and property during each event.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Each person submitting comments should include their name and address, identify this notice (CGD01–96–011), the specific section of the proposal to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8½″ x 11″ unbound paper in a format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. All comments received during the comment period will be considered by the Coast Guard and may change this proposal.

The Coast Guard has no plans to hold a public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the Federal Register. Good cause exists for providing a comment period of less than 30 days. Due to the date final information was available concerning these events, the Coast Guard was unable to publish this NPRM in time to provide a longer comment period. Due to the need to establish regulations providing for the safety of these events, which start on Memorial Day weekend, additional notice would be impracticable, unnecessary, and contrary to the public interest.

Discussion of Proposed Amendments

Each year, organizations in the First District sponsor fireworks displays in the same location during the same general time period. The Coast Guard proposes to establish a special local regulation that creates a regulated area surrounding the launch platform used during each fireworks display listed in Table 1 of the new regulation. Table 1 provides dates and locations for the annual fireworks events. Each event listed in Table 1 will use a barge or on-shore site as the fireworks launch platform. Given the concentration of explosives at the launch site, it is necessary to establish special local regulations to control vessel movement within a 500 yard radius around the launch platform to ensure the safety of persons and property at these events. Coast Guard personnel on-scene may allow vessels within the 500 yard radius should conditions permit. The Coast Guard will publish a notice in the Federal Register each year which provides the exact dates and times for these events.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration of each fireworks display, the advance notice provided to the marine community, and the small size of each regulated area, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact, on small entities, of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons mentioned in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13564, March 27, 1996) this proposal is a special local regulation issued in conjunction with annual regattas or marine parades and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows.

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2, A new section, § 100.114, is added to read as follows:

§ 100.114 First Coast Guard District Fireworks.

(a) *Regulated area.* That area within 500 yards of the launch platform for each fireworks display listed in Table 1 of this section.

Table 1—Fireworks Displays

1. Shooters Independence Day
Sponsor: Shooters Waterfront Cafe USA
Date: July 4
Location: Providence River off India Point Park, Providence, RI
2. Salute to Summer
Sponsor: Naval Education and Training Center
Date; Friday of Weekend preceding Labor Day holiday weekend
Location: Narragansett Bay, East Passage, off Coasters Harbor Island, Newport, RI
3. Yarmouth-Dennis Fireworks
Sponsor: Yarmouth-Dennis Chamber of Commerce
Date: Independence Day holiday weekend
Location: Nantucket Sound, east of channel entrance to Bass River, Yarmouth, MA
4. Edgartown Fireworks
Sponsor: Edgartown Firefighters Association
Date: Independence Day holiday weekend
Location: Edgartown Harbor, Edgartown, MA
5. City of New Bedford Fireworks
Sponsor: City of New Bedford
Date: Independence Day holiday weekend
Location: New Bedford Harbor, New Bedford, MA
6. Falmouth Fireworks
Sponsor: Falmouth Fireworks Committee
Date: July 4
Location: Falmouth Harbor, .25 nm east of buoy #16, Falmouth, MA
7. Bristol 4th of July Fireworks
Sponsor: Bristol Fourth of July Committee
Date: Independence Day holiday weekend
Location: Bristol Harbor, Bristol, RI
8. Oyster Harbor Club Fourth of July Festival
Sponsor: Oyster Harbor Club, Inc
Date: Independence Day holiday weekend
Location: Tim's Cove, North Bay, Osterville, RI
9. Town of Barnstable Fireworks
Sponsor: Town of Barnstable
Date: Independence Day holiday weekend
Location: Dunbar Point/Kalmus Beach, Barnstable, MA
10. Onset Fireworks
Sponsor: Prudential Commerce Onset Fire District
Date: Independence Day holiday weekend
Location: Onset Harbor, Onset, MA
11. Tiverton Waterfront Festival
Sponsor: Tiverton Waterfront Festival Committee
Date: Independence Day holiday weekend
Location: Grinnel's Beach, Sakonnet River, Tiverton, RI
12. Marion Fireworks
Sponsor: Town of Marion Fireworks Committee
Date: Independence Day holiday weekend
Location: Silver Shell Beach, Marion, MA
13. Wellfleet Fireworks
Sponsor: Wellfleet Fireworks Committee
Date: Independence Day holiday weekend
Location: Indian Neck Jetty, Wellfleet, MA
14. Oaks Bluff Fireworks
Sponsor: Oaks Bluff Fireman's Civic Association
Date: Last two weeks in August
Location: Oaks Bluff Beach, Oaks Bluff, MA
15. Anniversary Fireworks
Sponsor: Town of Chilmark
Date: Weekend in September
Location: Menemsha Beach, Chilmark, MA
16. Fall River Celebrates America Fireworks
Sponsor: Fall River Chamber of Commerce
Date: Second Saturday in August
Location: Taunton River, vicinity of buoy #17, Fall River, MA
17. Fireworks on the Navesink
Sponsor: Red Bank Fireworks Committee
Date: Independence Day holiday weekend
Location: Navesink River, 4 nm WSW Oceanic Bridge, Red Bank, NJ
18. Staten Island's 4th of July
Sponsor: Borough of Staten Island
Date: Independence Day holiday weekend
Location: Raritan Bay, vicinity of federal anchorages 44 and 45, Ward Point Bend, NY/NJ
19. Brick Founders Day Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: First weekend in June
Location: Metedeconk River, Windward Beach, Brick Township, NJ
20. Brick Summerfest Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: Independence Day holiday weekend
Location: Metedeconk River, Windward Beach, Brick Township, NJ
21. First Night Fireworks
Sponsor: First Night Inc.
Date: January 1, upon the stroke of midnight
Location: Boston Inner Harbor, Boston, MA
22. Boston Harborfest Fireworks
Sponsor: Harborfest Committee
Date: Harborfest Week Celebration in June or first week in July
Location: Boston Inner Harbor, Boston, MA
23. Weymouth 4th of July Fireworks
Sponsor: Town of Weymouth Harbormaster
Date: Independence Day holiday weekend
Location: Weymouth Fore River, Weymouth, MA
24. Gloucester Fireworks
Sponsor: Gloucester Chamber of Commerce
Date: Labor Day holiday weekend
Location: Gloucester Harbor, Gloucester, MA
25. Walsh's Fireworks
Sponsor: Mr. Patrick Walsh

Date: Independence Day holiday weekend
Location: Union River Bay, ME
26. Belfast Fireworks
Sponsor: Belfast Bay Festival Committee
Date: Third Saturday in July
Location: Belfast Bay, ME
27. Bangor Fireworks
Sponsor: Bangor 4th of July Corporation
Date: Independence Day holiday weekend
Location: Bangor/Brewer waterfront, ME
28. Bar Harbor Fireworks
Sponsor: Bar Harbor Chamber of Commerce
Date: Independence Day holiday weekend
Location: Bar Harbor/Bar Island, ME
29. Summer Music Fireworks
Sponsor: Summer Music Inc.
Date: Weekend during month of August
Location: Niantic River, Harkness Park, Waterford, CT
30. Montauk Independence Day
Sponsor: Montauk Chamber of Commerce
Date: Independence Day holiday weekend
Location: Montauk Town Beach, Montauk, NY
31. Koch Industrial Fireworks
Sponsor: Koch Industries
Date: Last weekend in August or first weekend in September
Location: Shinnecock Bay, South Hampton, NY
32. Norwich Harbor Day Fireworks
Sponsor: Harbor Day Committee
Date: Last Sunday in August
Location: Norwich Harbor, off American Wharf Marina, Norwich, CT
33. City of Norwalk Fireworks
Sponsor: Norwalk Recreation and Parks Department
Date: Independence Day holiday weekend
Location: Calf Pasture Beach, Long Island Sound, Norwalk, CT
34. Boys Harbor Fireworks Extravaganza
Sponsor: Boys Harbor Inc.
Date: Second or third weekend in July
Location: Three Mile Harbor, East Hampton, NY
35. Taste of Italy
Sponsor: Italian Heritage Committee
Date: Weekend following Labor Day holiday weekend
Location: Norwich Harbor, off Norwich Marina, Norwich, CT
36. Hartford Riverfest
Sponsor: July 4th Riverfest, Inc.
Date: Independence Day holiday weekend
Location: Connecticut River, Hartford, CT
37. Fairfield Aerial Fireworks
Sponsor: Fairfield Park Commission
Date: Independence Day holiday weekend
Location: Jennings Beach, Long Island Sound, Fairfield, CT
38. Middletown Fireworks
Sponsor: City of Middletown
Date: Independence Day holiday weekend
Location: Connecticut River, Middletown, CT
39. Thames River Fireworks
Sponsor: Town of Groton
Date: Weekend following Independence Day holiday weekend
Location: Thames River, off Electric Boat, Groton, CT
40. Stratford Fireworks
Sponsor: Town of Stratford
Date: Independence Day holiday weekend
Location: Short Beach, Stratford, CT
41. Hartford Riverfront Regatta
Sponsor: Riverfront Recapture Inc.
Date: First or second weekend in August
Location: Connecticut River, Hartford, CT
42. Subfest Fireworks
Sponsor: U.S. Naval Submarine Base
Date: Independence Day holiday weekend
Location: Thames River, Groton, CT
43. Old Lyme Fireworks
Sponsor: Mr. James R. Rice
Date: Independence Day holiday weekend
Location: Sound View Beach, Long Island Sound, Old Lyme, CT
44. Norwich American Wharf Fireworks
Sponsor: American Wharf Marina
Date: Independence Day holiday weekend
Location: Norwich Harbor, Norwich, CT
45. Wesport P.A.L. Fireworks
Sponsor: Westport Police Athletic League
Date: Independence Day holiday weekend
Location: Compo Beach, Westport, CT
46. Stamford Fireworks
Sponsor: City of Stamford
Date: Date within first two weeks of July
Location: Westcott Cove, Stamford, CT
47. First Night Mystic
Sponsor: Mystic Community Center
Date: December 31
Location: Mystic River, Mystic, CT
48. Cow Harbor Day Fireworks
Sponsor: Village of Northport Harbor
Date: Date within last two weekends of September
Location: Sand Pit, Northport Harbor, Northport, NY
49. Jones Beach State Park Fireworks
Sponsor: Long Island State Park Administration Headquarters
Date: Independence Day holiday weekend
Location: Fishing Pier, Jones Beach State Park, Wantagh, NY
50. Change Fireworks
Sponsor: Change, Medford, NY
Date: Date within first two weekends of August
Location: Short Beach, Nissequogue, NY
51. Devon Yacht Club Fireworks
Sponsor: Devon Yacht Club, Amagansett, NY
Date: Date within the first week of July
Location: Devon Yacht Club, Amagansett, NY
52. Hempstead Fireworks
Sponsor: Town of Hempstead, NY
Date: Date within the first week of July
Location: Point Lookout, Hempstead, NY
53. Town of Babylon Fireworks
Sponsor: Town of Babylon, NY
Date: Date within the first two weeks of July
Location: Nezeras Island, Babylon, NY
54. American Legion Post 83 Fireworks
Sponsor: Town of Branford American Legion Post 83
Date: Date within the first week of July
Location: Branford Point, Branford, CT
55. U.S. Open Fireworks
Sponsor: Barons Cove Inn, Sag Harbor, NY
Date: Date within the middle two weeks of June
Location: Barons Cove, Sag Harbor, NY
56. Bayville Crescent Club Fireworks
Sponsor: Bayville Crescent Club, Bayville, NY
Date: Independence Day holiday weekend
Location: Cooper Bluff, Cove Neck, NY
57. Yampol Family Fireworks
Sponsor: Azurite Corp. LTD., Fort Lauderdale, FL
Date: Date within the last weekend of May
Location: Barons Cove, Sag Harbor, NY

(b) *Special Local Regulations.*

(1) The Coast Guard patrol commander may delay, modify, or cancel the fireworks display as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short

blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates.* This section is in effect for each event listed in Table 1 on dates and times specified in a Federal Register notice.

Dated: May 10, 1996.

J.L. Linnon,

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

[FR Doc. 96–12867 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 165

[COTP San Diego 96–002]

RIN 2115–AA97

Security Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Secret Service, the Coast Guard proposes to establish a temporary security zone within San Diego Bay adjacent to the San Diego Convention Center. The security zone is needed to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Authorized vessels will be permitted to enter or remain within the security zone.

DATES: Comments must be received on or before July 8, 1996. Two public meetings will be held: one meeting on June 1, 1996 at 10 a.m. and the second meeting on July 2, 1996 at 7 p.m.

ADDRESSES: Comments may be mailed to LTJG John V. Reinert, Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101. Comments may also be delivered between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will be available for inspection and copying at this address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The June 1, 1996 public meeting will be held at the San Diego Marriott and Marina, 385 West Harbor Drive, San Diego, CA. The July 2, 1996 public meeting will be held at Building ''I'', Coast Guard Activities San Diego, 2710 North Harbor Drive, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: LTJG John V. Reinert, Marine Safety Office, 2716 N. Harbor Dr., San Diego, CA 92101 (619) 683–6486.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rule making by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego 96–002) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The Captain of the Port San Diego plans to hold two public meetings in San Diego, CA on this proposed rule. The first meeting will be June 1, 1996 at 10 a.m. at the San Diego Marriott and Marina. The second meeting will be held at 7 p.m. at Building ''I'' Coast Guard Activities San Diego.

Discussion of Proposed Regulations

The Republican National Convention will be held at the San Diego Convention Center in San Diego, CA from August 11 through 15, 1996. The Secret Service requested that the Coast Guard establish the proposed security zone to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Expected attendees at the Convention may include former U.S. presidents and their spouses, high ranking U.S. government officials and the Republican presidential and vice-presidential nominees.

The security zone will be in effect from 8 a.m. PDT on August 11, 1996 until 11 p.m PDT on August 15, 1996. The security zone will encompass the entrance to the Marriott Marina, and includes the following water and land area: starting at a point along the waterfront between Marriott Marina finger piers ''F'' and ''G'' at a point 32°42′26″N, 117°09′56″W, extending southwesterly to the south end of North Embarcadero Park at a point 32°42′20″N, 117°10′01″W, continuing 500 feet southwesterly toward channel buoy ''23'' at a point 32°42′16″N, 117°10′07″W, then southeasterly following the South Embarcadero Park shoreline so a point where it intersects with the easterly side of navigable channel at 32°42′13″N, 117°10′02″W, proceeding along the channel edge 100 feet past the southernmost point of South Embarcadero Park to a point 32°42′09″N, 117°09′50″, then northeasterly until it intersects with the shoreline at a point 32°42′16″N, 117°09′42″W, then along shoreline to the point of beginning.

Pursuant to the Coast Guard's authority in 33 U.S.C. 1223; 50 USC 191, and the general regulations governing security zones in 33 CFR 165.33 and 33 CFR 6.04, no vessel will be allowed to enter or remain in this zone unless specifically authorized by the Captain of the Port (COTP). The COTP may grant permission for a vessel to enter or remain within the security zone if the vessel owner or operator first consents to a search of the vessel by the U.S. Secret Service, U.S. Coast Guard, or other authorities for the purpose of finding explosives, weapons, or other articles which may pose a threat to the Marriott Marina or any adjacent vessels, waterfront facilities, or waters. The owner or operator of a vessel entering the security zone must also provide the COTP with a list of persons on board and destination slip number. Vessels whose owners or operators do not consent to a search of their vessels or who refuse to provide any information requested by the COTP will not be granted permission to enter or remain within the security zone. While the security zone is in effect, no person will be granted permission by the COTP to remain on any vessel within the security zone between the hours of 10 p.m. and 8 a.m.

The COTP may grant permission for a vessel in the mooring at the Marriott Marina to remain within the security zone if the owners or operators consent to a search of the vessel. If a vessel leaves its mooring and exits the security zone, its reentry will be conditioned on consent to be searched. Additionally, the owner or operator of the vessel will be required to provide the COTP with a list of persons on board the vessel when transiting the security zone and an estimated time of return to moorings within the security zone.

Under the authority granted the COTP in 33 CFR 6.04–8 to control the movement of any vessel within the territorial waters of the United States under his jurisdiction, vessels within the security zone will not be allowed to move on August 15, 1996 from 2 p.m. to 11 p.m. The COTP will not grant permission for any vessel to enter the security zone during that time period. Additionally, during this time period,

under the authority in 33 CFR 6.04–7, the COTP will not allow any person to remain on vessels moored at Marriott Marina finger piers G, H, I, and J.

The COTP, working with the Secret Service and other law enforcement authorities during this operation, may impose other restrictions within the security zone if circumstances dictate. Restrictions imposed by the COTP will be tailored to impose the least impact on maritime interests while ensuring the security of the Marriott Marina or any adjacent vessels, waterfront facilities, or waters.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small Entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the small Business Act (15 U.S.C. 632). The Captain of the Port may grant permission for vessels to enter or remain in the security zone, subject to the conditions discussed previously. Costs incurred by vessel owners and commercial entities within the security zone are expected to be minimal. Any such costs are greatly outweighed by the need to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

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

Environmental Assessment

This proposed rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475. 1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, 33 CFR part 165 is proposed to be amended as follows:

PART 165—[AMENDED]

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

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

2. A new section 165.T11–030 is added to read as follows:

§ 165.T11–030 Security Zone; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a security zone: the water and land area adjacent to the San Diego Convention Center, San Diego, CA, described as follows:

Beginning at 32°42′26″N, 117°09′56″W; then southwest to 32°42′20″N, 117°10′01″W; then southwest to 32°42′16″N, 117°10′07″W; then southeast to the outer channel line to 32°42′13″N, 117°10′02″W; then continuing along the outer channel line to 32°42′09″N, 117°09′50″W; then northwest to point of land at 32°42′16″N, 117°09′42″W; then along shoreline to the point of beginning. (Datum: NAD 83)

(b) *Effective dates.* This section is in effect from 8 a.m. PDT on August 11, 1996 until 11 p.m. PDT on August 15, 1996.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into this zone is prohibited except as authorized by the Captain of the Port.

(2) The COTP may grant permission for a vessel to enter or remain within the security zone if the owners or operators consent to a search of their vessel for the purpose of locating explosives, weapons, or other articles or things which could pose a threat to the security of the Marriott Marina, adjacent vessels, waterfront facilities, or waters.

(3) All persons and vessels within the security zone shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Upon being hailed via siren, radio, flashing light, or other means, the operator of a vessel shall follow the instructions of the patrol personnel.

(4) The Captain of the Port will notify the public of the status of this security zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: April 26, 1996.

J.A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 96–13041 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 96–2]

Acquisition of Library Materials by Non-purchase Means and Disposition of Surplus Library Materials

AGENCY: Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Library of Congress is proposing to revise its policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies. The Library wishes to eliminate the transfer of all bound and unbound serials and restrict all other transfers to certain specific categories.

DATES: Comments should be received on or before June 24, 1996.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, D.C. 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, S.E.,

Washington, D.C. 20540–1050, (202) 707–6316.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 131, 136, and 149, the Librarian of Congress has general and specific authority for the administration and disposition of Library materials; it pertains to the organization and handling of duplicate materials and to the exchange and transfer operations of the Library, sale, donation to domestic educational institutions and public bodies, and the disposition of materials not needed for any of these uses. In order to enhance these operations and to fill gaps in its permanent collections, the Library of Congress has encouraged libraries and other agencies of the Federal Government to send to the Library's Exchange and Gift Division all library materials that are surplus to their needs. For several decades this program benefitted the Library, the Federal library community and the general public. Because of reductions in staffing levels, due to budgetary constraints, and reduced demand in some categories, the Library can no longer fully utilize these materials. In analyzing the costs and benefits to the Federal Government, the Library found that the expenses to administer the current program far outweigh the benefits. By implementing this regulation, the Library will be able to redirect its remaining fiscal and human resources to efficiently administer a reduced, but more focused, program. Other Federal agencies will achieve considerable savings in labor and postage by not having to handle and ship unwanted materials to the Library of Congress. The proposed replacement text for 36 CFR 701.33(a)(4) is revised to set forth the general policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulations

In consideration of the foregoing the Library of Congress proposes to amend 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 131, 136 & 149.

2. Section 701.33(a)(4) is revised to read as follows:

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

* * * * *

(4) Transfer. Libraries and other agencies of the Federal Government are encouraged to send to the Library for disposition soft or hard-bound books that are surplus to their needs in the following categories: Novels and Reference works (e.g. encyclopedias, directories, guides, such as Encyclopedia of Associations, The World of Learning, The Statesman's Yearbook, Books in Print, etc.) not older than three years. And not older than five years in: Humanities (art, music, belles lettres etc.); History and area studies; Social sciences (economics, politics, etc.); Education; and Science (agriculture, medicine, computer science, mathematics, physics, etc.). Such transferred materials are needed to fill gaps in the Library's holdings, for exchanges, to transfer to other Federal agencies, and to make available through the Surplus Books Program to qualified recipients. The Library's Exchange and Gift Division (E&G) requests notification at the earliest possible date of any government libraries that are scheduled to close or be substantially reduced. The Library also requests that shipments of 1,000 pounds or more be cleared with E&G in advance. The Library does not accept bound and unbound serials. Federal agencies should dispose of surplus serials, and other surplus library materials not specified above, in accordance with their agency's regulations governing the disposal of surplus materials.

* * * * *

Dated: May 16, 1996.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–12895 Filed 5–22–96; 8:45 am]

BILLING CODE 1410–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–80–1–9619b & NC–81–1–9620b; FRL–5505–5]

Approval and Promulgation of Implementation Plans; Forsyth County: Approval of Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 29, and December 28, 1995, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions include the adoption of three source-specific volatile organic compound rules; Subchapter 3D .0955, Thread Bonding Manufacturing, .0956, Glass Christmas Ornament Manufacturing, and .0957 Commercial Bakeries, the deleting of textile coating, Christmas ornament manufacturing, and bakeries from the list of sources that must follow interim standards, the defining of di-acetone alcohol as a non-photochemically reactive solvent, and the placement of statutory requirements for adoption by reference for referenced ASTM methods into a single rule rather than each individual rule that references ASTM methods.

Revisions to Subchapter 3D .1401–.1415; Reasonably Available Control Technology for Sources of Nitrogen Oxides (No_x RACT); .1501–.1504 Transportation Conformity; and .1601–.1603; General Conformity are being addressed in separate Federal Register documents.

In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 24, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

North Carolina Department of Environmental, Health, and Natural Resources, Division of Environmental Management, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4212.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: March 21, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

[FR Doc. 96–12891 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA48–7121b; FRL–5506–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of updating regulations administered by the Energy Facility Site Evaluation Council (EFSEC). The SIP revision was submitted by the State to satisfy Federal Clean Air Act requirements contained in 40 CFR Part 52. In the Final Rules Section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by June 24, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. U.S. Environmental Protection Agency, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101. The State of Washington, Department of Ecology, 4550 Third Avenue SE., Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Ed Jones, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1743.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Dated: May 6, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–12893 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–83; RM–8634]

Radio Broadcasting Services; Littlefield, Wolfforth and Tahoka, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a *Request for Supplemental Information* regarding the proposal filed by 21st Century Radio Ventures, Inc., permittee of Station KAIQ(FM), Channel 238C3, Littlefield, Texas, proposing the reallotment of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of Station KAIQ(FM)'s construction permit to specify Wolfforth as its community of license. To accommodate this reallotment, 21st Century also proposed either the deletion or substitution of the Channel 237A allotment at Tahoka, Texas. *See Notice of Proposed Rule Making,* 10 FCC Rcd 6598 (1995). We request that 21st Century submit information sufficient to show that Wolfforth is deserving of a first local service preference using the Commission's three factors enumerated in *RKO General (KFRC)* and *Faye and Richard Tuck*. The Request for Supplemental Information does not afford any parties an opportunity to file counterproposals.

DATES: Comments must be filed on or before July 8, 1996.

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: James L. Primm, 21st Century Radio Ventures, Inc., 713 Broadway, Santa Monica, California 90401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Request for Supplemental Information,* MM Docket No. 95–83, adopted May 8, 1996, and released May 17, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–12969 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

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

Submission for OMB Review; Comment Request

May 17, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

National Agricultural Statistics Service

- *Title:* June Agricultural Survey.

Summary: The June Agricultural Survey collects information on planted acreage for major crops, livestock inventories, and on-farm grain stocks. The June crops data establishes the base for estimating crop production and value for the remainder of the crop year.

Need and Use of the Information: Indications from this survey are used to estimate the major crops grown, livestock inventories, on-farm grain stocks and agricultural land values and rents. Estimates are used throughout government and agriculture in policy, production, and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 110,300.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 19,691.

Forest Service

- *Title:* Special Use Administration.

Summary: Information is needed from these parties who seek special-use authorizations to conduct private or commercial operations on National Forest System land, or from those who are currently utilizing National Forest System lands for private or public use.

Need and Use of the Information: There is a basic obligation of the Forest Service to ensure that the use of Federal lands is in the public interest; is compatible with the mission of the Forest Service; and that environmental and social impacts are identified and mitigated and that a fee based on fair market value is received. This evaluation can only be accomplished with the cooperation and information furnished by the applicant or permit holder.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 45,075.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 66,363.

National Agricultural Statistics Service

- *Title:* Agricultural Labor Survey.

Summary: The agricultural labor survey provides data to estimate number of farm workers, hours worked, and wage rates.

Need and Use of the Information: The 1938 Agricultural Adjustment Act requires wage rate data for computation of an index component. This component is used in calculation of parity prices. The Department of Labor needs agricultural labor data for the administrations of the ''H–2A'' program and for setting ''adverse effect wage rates''.

Description of Respondents: Farms.

Number of Respondents: 12,815.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 10,878.

Animal and Plant Health Inspection Service

- *Title:* Application for Veterinary Accreditation.

Summary: The veterinary accreditation program certifies qualified veterinary practitioners to participate in certain Federal or Federal/State regulatory animal health programs.

Need and Use of the Information: The program accredits and thereby authorizes private veterinary practitioners to work cooperatively with APHIS and the animal health officials to carry out regulatory programs and activities that assure the health of the nations livestock and poultry.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 56,024.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 60,210.

Donald Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 96–12902 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Williams Mountain Project Area, Medicine Bow/Routt National Forest, Grand County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement on a proposal to manage forest vegetation within the Williams Mountain Project Area on the Medicine Bow/Routt National Forest within Grand County, Colorado.

The Forest Serve invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis of this proposal and that interested or affected people may participate and contribute to the final decision. Issues raised will help establish the scope of the environmental analysis and develop the range of alternatives to be considered. The Forest Service welcomes any public or agency comments on this proposal.

DATES: Comments concerning the scope of the analysis should be received by June 24, 1996. Comments may be either written or oral.

ADDRESSES: Send written comments to Larry W. Ross, District Ranger, Parks District, P.O. Box 158, Walden, Colorado 80480–0158. Oral comments will be considered as well and can be made by calling (970) 723–8204.

FOR FURTHER INFORMATION CONTACT: John Natvig, Williams Mountain Project Area Interdisciplinary Team Leader, (970) 723–8204.

SUPPLEMENTARY INFORMATION: The Routt National Forest Land and Resource Management Plan (Forest Plan) provides a blueprint for a Desired Future Condition (DFC) on public lands administered by the Medicine Bow/Routt National Forest. In addition the Forest Plan establishes resource goals and outputs needed to manage the resources while achieving the DFC. The nature and scope of the proposed action includes a combination of prescribed fire and silvicultural treatments to create vegetation patterns consistent with those created through natural process and cycles in order to optimize habitat capability for a range of wildlife management indicator species (Forest Plan, III–125). Treatments and associated activities being considered include timber harvest, road construction, and prescribed fire. Management activities would also be implemented to maintain structural diversity (Forest Plan, III–12), manage aspen for retention (Forest Plan, III–13), prevent or suppress epidemic insect and disease populations (Forest Plan, III–79), and decrease fuel conditions to permit fire suppression forces to meet fire protection objectives for the area (Forest Plan, III–78).

The decision to be made is whether or not to proceed with the vegetation treatments and associated road construction activities. A range of alternative actions will be developed based on public and agency issues raised during the scoping process.

The Forest Service manages the land within the analysis area under ''Management Prescriptions 2B, 4B, and 5B.'' The proposed action is consistent with the Routt National Forest Plan.

The following are preliminary issues and concerns which have been identified: (1) Prescribed fire and/or prescribed natural fire should be considered as a tool to meet management needs. (2) Management activities need to be analyzed in regard to effects on wildlife management indicator species. (3) Management activities should emulate natural processes, their function, and result in a landscape pattern similar to natural disturbance. (4) Management activities may have negative effects on adjacent private lands. (5) Management activities may have a negative effect on visual quality. (6) The unroaded character of the area should be maintained.

The Responsible Official will be Larry W. Ross, Parks District Ranger, Medicine Bow/Routt National Forest and Thunder Basin National Grasslands, 612 5th Street, PO Box 158, Walden, Colorado, 80480.

The Draft Environmental Impact Statement is expected to be available in October 1996 and the Final Environmental Impact Statement available in January 1997.

A 45-day public comment period on the Draft Environmental Impact Statement will commence on the day the Environmental Protection Agency publishes a ''Notice of Availability'' in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on this Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on this Draft Environmental Impact Statement will be regarded as public information.

Dated: May 14, 1996.

Larry W. Ross,

Parks District Ranger, Medicine Bow/Routt National Forest.

[FR Doc. 96–12980 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M

Southeast Alaska Federal Subsistence Regional Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southeast Alaska Federal Subsistence Regional Advisory Council will meet in Juneau, Alaska, on June 4 and 5, 1996, at the Juneau City Council Chambers. The public is invited to attend the meeting, observe the proceedings, and provide oral testimony on two agenda items: (1) The advance notice of proposed rulemaking published April 4, 1996, in the Federal Register (61 FR 15014) concerning modifications to Federal Subsistence Management Regulations for Public Lands in Alaska, at Title 36, Code of Federal Regulations, part 242, and 50 CFR part 100, and (2) revision of the Tongass National Forest Land and Resource Management Plan (61 FR 18587).

DATES: The meeting will be held June 4 and 5, 1996, from 9 a.m. to 5:30 p.m. Oral testimony will be taken from 2 p.m. to 5:30 p.m. on June 5.

ADDRESSES: The meeting will be held at the Juneau City Council Chambers, 155 S. Seward Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Fred P. Clark, Council Coordinator, (907) 586–7895).

SUPPLEMENTARY INFORMATION: The Southeast Alaska Federal Subsistence Regional Advisory Council is one of the councils established in each subsistence resource region by the Federal Subsistence Board, to provide regional forums for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands and to provide for public participation in the Federal regulatory process. The councils operate in accordance with the Federal Advisory Committee Act and have been established in accordance with the Alaska National Interest Lands Conservation Act.

Dated: May 17, 1996.

Kimberly Evart Bown,

Acting Deputy Regional Forester for Resources, USDA Forest Service, Alaska Region—Region 10.

[FR Doc. 96–12944 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Alabama Electric Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) may prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Alabama Electric Cooperative to construct two combustion turbines at the site of their existing McIntosh Power Plant located in McIntosh, Alabama. RUS may provide financing assistance to Alabama Electric Cooperative for project construction costs.

MEETING INFORMATION: RUS will conduct a scoping meeting in an open house forum on June 27, 1996, from 6 p.m. until 8 p.m. at the McIntosh Power Plant located on the west side of Highway 43 at mile marker 41 in McIntosh, Alabama.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Ag. Box 1571, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative proposes to construct two 113 megawatt (MW) combustion turbine generators adjacent to its existing McIntosh Power Plant. This power plant is located just west of U.S. Highway 43 near the center of Section 1, Township 3 north, Range 1 west in Washington County, Alabama, just south of McIntosh.

Alternatives to be considered by RUS and Alabama Electric Cooperative to Alabama Electric Cooperative constructing the generation facility proposed include: (a) No action, (b) purchase of peaking capacity from independent power producers, co-generators, and other electric utilities, and (c) constructing the proposed generation facilities at alternative site locations.

To be presented at the public scoping meeting will be an alternative evaluation and siting-study prepared by Alabama Electric Cooperative. The alternative evaluation and siting study is available for public review at RUS at the address provided in this notice or at Alabama Electric Cooperative, U. S. Highway 29 North, Andalusia, Alabama 36420. It can also be reviewed at the libraries in McIntosh and Chatom, Alabama.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Alabama Electric Cooperative will be available to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the June 27th public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the alternative evaluation and siting study, input that may be provided by government agencies, private organizations, and the public, Alabama Electric Cooperative will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and RUS environmental policies and procedures.

Dated: May 17, 1996.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 96–12998 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–15–P

Dairyland Power Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to conduct scoping meetings and prepare an environmental assessment and/or an environmental impact statement.

SUMMARY: The Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) intends to hold public scoping workshops and prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for a transmission project proposed by Dairyland Power Cooperative (Dairyland) and Northern States Power (NSP). RUS may provide financing assistance to Dairyland for project construction costs.

MEETING INFORMATION: RUS will conduct four scoping meetings in an open house forum as follows: on June 24, 1996, from 2 p.m. until 8 p.m. at the Lake Woods Resort, in Cable, Wisconsin; on June 25, 1996, from 2 p.m. until 8 p.m. at the Hotel Chequamegon, located on Lakeshore Drive West, in Ashland, Wisconsin; on June 26, 1996, from 2 p.m. until 8 p.m. at the Dalles House Restaurant located at the junction of Highways 35 and 8 in St. Croix Falls, Wisconsin; and on June 27, 1996, from 2 p.m. until 8 p.m. at the Lent Township Townhall located on 3355 Hemmingway Road in Stacy, Minnesota.

FOR INFORMATION CONTACT:

Mr. Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Ag. Box 1571, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784, or

Mr. Chuck Thompson, Dairyland Power Cooperative, 3200 East Avenue South, P.O. Box 817, La Crosse, Wisconsin 54602–0817, telephone (608) 788–1432.

SUPPLEMENTARY INFORMATION: Dairyland, in conjunction with NSP, proposes to construct approximately 35 miles of 230 kV transmission line from the Chisago Substation near Lent, Minnesota, to the Apple River Substation, in Polk County, Wisconsin, and 50 miles of 161 kV transmission line from the Stone Lake Substation, near Hayward, Wisconsin, to the Bayfront Substation in Ashland, Wisconsin.

Alternatives to be considered by RUS include no action, demand side

management, local generation, system alternatives, transmission alternatives, and alternative routes.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS, Dairyland, and NPS will be available to discuss RUS's environmental review process, describe the project and alternatives under consideration, explain the need for the project, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. An Alternative Evaluation and Macro-Corridor Study (Study) to be prepared by Dairyland, and its consultant, will be presented for review and comment at the public scoping meetings. The Study will be made available for review and comment following the public scoping meetings at a convenient location to be announced at the public scoping meetings and in public and legal notices placed in newspapers with a circulation in the project area. Written comments will be accepted at the addresses provided in this notice within 30 days after the June 27 public scoping meeting.

Based on the Study and input from Federal, State and local agencies, private organizations, and the public, Dairyland will prepare an Environmental Analysis to be submitted to RUS for review. If significant impacts are not evident based on RUS's independent review of the Environmental Analysis (EVAL) and other relevant information, RUS will prepare an EA to determine if the preparation of an EIS is warranted. If the EVAL or the EA indicates that significant impacts may occur due to project construction, RUS will prepare an EIS.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by CEQ and RUS Environmental Policies and Procedures.

Dated: May 17, 1996.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 96–12997 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–15–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Notice of Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Annual meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold an annual meeting on June 19, 1996. The meeting is open to the public. An executive session will be held from 9:15 am to 10:30 am which will be closed to the public.

DATES: June 19, 1996, 9:00 am–4:00 pm.

ADDRESSES: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717–234–6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Public Law 100–319, May 19, 1988). The Commission represents the states of Delaware, Maryland and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Public Law 99–240, January 15, 1986).

The primary purpose of this meeting is to: consider a revised budget for 1996–97; consider a proposed budget for 1997–98; elect officers; and hear a status report on the siting of a regional LLRW disposal facility. A draft agenda can be obtained by contacting the Commission at 717–234–6295.

Marc S. Tenan,

Executive Director.

[FR Doc. 96–12953 Filed 5–22–96; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Fair Privatization Application; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2) (A)).

DATES: Written comments must be submitted on or before July 22, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Bucher, Manager, Trade Fair Certification, tel. (202) 482–2525.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (Commerce) that provides Commerce endorsement and support for high-quality international trade fairs which are organized by private-sector firms. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: direct sales, identification of local agents or distributors, market research and exposure, and joint venture and licensing opportunities for their products and services.

The objective of the application is to make a determination that the trade fair organizer is qualified to organize and manage U.S. exhibitions at a foreign trade show.

II. Method of Collection

The collection is by mail. Applicants mail the applications to the U.S. Department of Commerce.

III. Data

OMB Number: 0625–0222.

Form Number: Agency—ITA–4134P.

Type of Review: Renewal—Regular submission.

Affected Public: Business and other for profit and non-profit entities in the United States.

Estimated Number of Respondents: 50.

Estimated Time per Response: average 12 hours per response.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost: $21,000—Respondents will not need to purchase equipment or materials to respond to this collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13044 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–FP–P

National Oceanic and Atmospheric Administration

[I.D. 051796B]

Atlantic Offshore Fisheries Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Take Reduction Team (TRT) to address bycatch of Atlantic offshore cetaceans in the U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery will hold its first meeting to develop a Take Reduction Plan (TRP) as described in the Marine Mammal Protection Act (MMPA) focusing on reducing bycatch in these fisheries.

DATES: The meeting will be held on May 29–30, 1996, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The TRT meeting will be held at the Government Center Holiday Inn, Boston, MA 20010.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, (508) 281–9254, or Victoria Cornish, (301) 713–2322.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor. Stock Assessment Reports and the calculated PBR were published by NMFS in July 1995.

The MMPA defines a ''strategic stock'' as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term ''potential biological removal,'' or PBR, as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.''

The U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery interact with several strategic marine mammal stocks including: Long-finned and short-finned pilot whales, common dolphins, Atlantic spotted dolphins, and the offshore stock of bottlenose dolphin. The U.S. Atlantic large pelagic drift gillnet fishery also interacts with three species of endangered large whales; the humpback whale, the northern right whale, and the sperm whale (supporting documentation at 60 FR 67063, December 28, 1995).

These stocks are considered strategic under the MMPA because they are either listed as an endangered or threatened species under the ESA or because the level of human-caused mortality is greater than their PBR levels.

Section 118(f) of the MMPA requires NMFS to establish a TRT to prepare a draft TRP designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. Section 118(f)(6)(C) requires that members of the TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality and serious injury of such species. The MMPA further specifies that members of the TRT shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as deemed appropriate.

As a result of stock assessment reports developed under section 117 of the MMPA, and an extended interview process conducted by a NMFS-contracted facilitator, NMFS, through a letter dated April 15, 1996, has asked the following individuals to be a member of the TRT, which will focus on reducing bycatch of the strategic marine mammals stocks taken as bycatch in the U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery:

Douglas Beach, National Marine Fisheries Service; Nelson Biederman, Blue Water Fishermen's Association; Joe DeAlteris, Rhode Island Sea Grant; Pete Dupuy, Ocean Pacific Seafood; Cliff Goudy, Massachusetts Institute of Technology Sea Grant; John Hoey, National Fisheries Institute; Thomas Hoff, Mid-Atlantic Fishery Management Council; Gail Johnson, Maine Fishermen's Wives Association; Bob Kenney, University of Rhode Island; Fred Mattera, Northeast Atlantic Swordfish Netters Association; Hans Neuhauser, Georgia Land Trust; Ralph Owen, Great Circle Fisheries; Mark Phillips, F/V ILLUSION; Andrew Read, Duke University Marine Laboratory;

John Reimer, Offshore Resource Management Corporation; Sharon Young, Humane Society of the United States; Nina Young, Center for Marine Conservation; April Valliere, Rhode Island Division of Fish and Wildlife; and Billy Gell, Northeast Atlantic Swordfish Netters Association. Other individuals from NMFS, state and Federal agencies may be present as observers or for their scientific expertise. The TRT will be facilitated by Susan Podziba and Associates, Brookline, MA.

NMFS fully intends to convene a TRT process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of any one team. TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

Authority: 16 U.S.C. 1387.

Dated: May 17, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12925 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 17, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on June 1, 1996, for goods produced or manufactured in Pakistan and exported from Pakistan on and after June 1, 1996, part-category visas will be required for Categories 666–P, 666–S and 666–O. During the period June 1, 1996 through June 30, 1996, textile products in Category 666 may be visaed as Category 666 or the correct part category. Goods in Category 666 exported on and after July 1, 1996 shall be denied entry if not visaed as 666–P, 666–S or 666–O.

See 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 17, 1996.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan which were not properly visaed by the Government of Pakistan.

Effective on June 1, 1996, goods produced or manufactured in Pakistan and exported from Pakistan on and after June 1, 1996, in Category 666 shall required a 666–P,[1] 666–S[2] and 666–O[3] visa. During the period June 1, 1996 through June 30, 1996, you are directed to accept shipments visaed as 666, 666–P, 666–S and 666–O. Goods in Category 666 exported on and after July 1, 1996 shall be denied entry if not visaed as part-Categories 666–P, 666–S or 666–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–13045 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[2] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

[3] Category 666–O: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020 (Category 666–P); 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040 (Category 666–S).

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in Alberta Natural Gas Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in futures and futures options on Alberta natural gas. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Reference should be made to the NYMEX Alberta natural gas contract futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5282.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to

confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 17, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–12996 Filed 5–22–96; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 1998, which begins October 1, 1997. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 1998 will become part of the public record.

DATES: The hearing will begin at 10 a.m. on June 25, 1996. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than June 18, 1996. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than June 18, 1996.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned ''Agenda and Priorities'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 1998, which begins on October 1, 1997.

Accordingly, the Commission will conduct a public hearing on June 25, 1996, to receive comments from the public concerning its agenda and priorities for fiscal year 1998. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention.

When the Commission selects priorities, it does so in accordance with its policy statement governing establishment of priorities codified at 16 CFR 1009.8. That policy statement includes the following factors to be considered by the Commission when selecting its priorities:

- Frequency and severity of injuries.
- Causality of injuries.
- Chronic illness and future injuries.
- Costs and benefits of Commission action.
- Unforeseen nature of a risk of injury.
- Vulnerability of the population at risk.
- Probability of exposure to hazard.

The order of listing of these criteria does not indicate their relative importance.

Persons who desire to make oral presentations at the hearing on June 25, 1996, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 504–0800, telefax (301) 504–0127, not later than June 18, 1996.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 18, 1996. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 25, 1996, and will conclude the same day.

Written comments on the Commission's agenda and priorities for fiscal year 1998, should be received in the Office of the Secretary not later than June 18, 1996.

Dated: May 17, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–12881 Filed 5–22–96; 8:45 am]

BILLING CODE 6355–01–P

[CPSC Docket No. 96–C0005]

In the Matter of Shrdlu, d/b/a/ The Sandy Starkman Co., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR section 1605.13. Published below is a provisionally-accepted Settlement Agreement with Shrdlu Corporation, d/b/a/ The Starkman Co., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 7, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 17, 1996.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

Shrdlu Corp., d/b/a The Sandy Starkman Co. (hereinafter ''Respondent'' or ''Starkman''), a corporation, enters into this Consent Order Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission (''the staff'') pursuant to the procedures set forth in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the purpose of settling allegations of the staff that Respondent imported and sold 100% rayon, double layer skirts, style #73451, in commerce, which skirts failed to comply with the Standard for the Flammability of Clothing Textiles, 16 CFR 1610 (the ''standard'').

Respondent and the Staff Agree

1. The Consumer Product Safety Commission (''Commission'') is an independent regulatory agency of the United States Government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. §§ 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. §§ 1191 *et seq.* (FFA) and the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.* (FTCA).

2. Respondent is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 10 Grand Blvd., Deer Park, New York 11729.

3. Respondent is now, and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of women's wearing apparel subject to the standard.

4. This Agreement is for the purpose of settling the allegations in the accompanying Complaint. This Agreement does not constitute an admission by Respondent that it knowingly violated the law. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

5. The parties agree that this Consent Order Agreement resolves the allegations of the Complaint and the Commission shall not initiate any other criminal, civil or administrative action against the firm for those alleged violations based on the information currently known to the staff.

6. Respondent waives any rights to a formal hearing, and any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

7. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with section 6(b) of the CPSA.

8. This Agreement, and the Complaint accompanying the Agreement, may be used in interpreting the Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following order:

Peter Goodman,

Shrdlu Corporation d/b/a The Sandy Starkman Co.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission.

Complaint

The staff of the Consumer Product Safety Commission (''staff'') contends that Shrdlu Corporation, d/b/a/ The Sandy Starkman Co., a corporation (''Respondent''), is subject to the Consumer Product Safety Act, 15 U.S.C. 2051, *et seq.* (CPSA); the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FTCA); and, the Standard for the Flammability of clothing textiles, 16 C.F.R. § 1610, (''the standard'').

Based upon the information provided to the Commission by the staff, the Commission determined that it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194; and section 5 of the FTCA, 15 U.S.C. 45; and in accordance with the Commission's Rules of Practice of Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 1410 Broadway, Suite 801, New York, New York 10018.

2. Respondent is and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of women's wearing apparel subject to the standard.

3. Between October 26, 1993 and the end of January 1994, Respondent imported and/or sold in commerce items of women's wearing apparel, namely 900 100% rayon, double layers skirts, style #73451. It was subsequently discovered, through testing by the purchaser, that the skirts failed to comply with the flammability requirements of the standard.

4. As a result of this failure to comply with the standard, Respondent manufactured for sale, sold, or offered for sale, in commerce, or imported, delivered for introduction, transported in commerce, or sold or delivered after sale or shipment in commerce, a significant number of garments that failed to comply with the FFA.

Relief Sought

Wherefore, the staff requests the Commission to issue an Order requiring Respondent to cease and desist from the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of any item of wearing apparel subject to the standard that fails to comply with the standard.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the _____ day of _____ 199 .

By Direction of the Commission:

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Order

I

It is hereby ordered that Respondent, its successors and assigns agents, representatives and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering

for introduction, transporting or causing to be transported, in commerce, any item of wearing apparel that fails to comply with the flammability requirements of the Standard for Flammability of clothing textiles, 16 C.F.R. part 1610.

II

It is further ordered that Respondent pay to the United States Treasury a civil penalty of $5,000.00 no later than March 20, 1996 or within 20 days after service upon the Respondent of the Final Order, whichever comes later.

III

It is further ordered that for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission with in 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR Section 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

So ordered by the Commission, this 17th day of May 1996.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

By direction of the Commission, this Consent Order Agreement is hereby finally accepted and issued as an Order of the Consumer Product Safety Commission.

[FR Doc. 96–12880 Filed 5–22–96; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of George Air Force Base (AFB), CA

On April 10, 1996, the Air Force signed the Supplemental Record of Decision (ROD) for the Disposal and Reuse of George AFB, CA. The decisions included in this Supplemental ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of George AFB, filed with the Environmental Protection Agency in March 1992.

George AFB closed on December 15, 1992, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BCRA) (Public Law 100–526), and the recommendations of the Defense Secretary's Commission for Base Realignment and Closure. This Supplemental ROD modifies certain previous decisions made in the initial ROD executed on January 14, 1993, and first supplemented September 21, 1993. This Supplemental ROD documents the decisions made by the Air Force on the division of parcels, the method by which parcels are to be conveyed or transferred, and the mitigation measures to be adopted.

The previous decisions making Parcels B, D, H, J, Primary Roads, Railroad right-of-way, Gas, and Telephone utility systems, available for disposal by negotiated or public sale is modified to provide for the disposal of such property by Economic Development Conveyance (EDC) under the provisions of Public law No. 103–160, the Pryor Amendments. Previous decisions making Parcels F and G available for disposal by negotiated or public sale is modified to provide for the disposal of such property under the EDC, consistent with the provisions of Pub. L. No. 103–421, the Base Closure Community Redevelopment and Homeless Assistance Act. Parcel D is modified by the withdrawal of approximately 1.5 acres of fee land improved with the electrical substation. The withdrawn acreage is designated as Parcel SS. Consistent with the Air Force's previous decision, the electrical substation and distribution system will be disposed of by negotiated sale to the authorized franchise holder. In all other respects, previous decisions regarding such parcels are unchanged. The decisions in this document, coupled with those in the previous ROD, complete the disposal decisions for George AFB.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John E. B. Smith or Ms. De Carlo Ciccel at (703) 696–5540. Correspondence should be sent to: AFBCA/DE, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–12963 Filed 5–22–96; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF THE DEFENSE

Department of the Army

Record of Decision on the Final Environmental Impact Statement on the Disposal and Reuse of the Tooele Army Depot Base Realignment and Closure (BRAC) Parcel

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announced its Record of Decision (ROD) on the Final Environmental Impact Statement (FEIS) for the disposal and reuse of the 1,700-acre BRAC parcel at Tooele Army Depot, Tooele, Utah. In accordance with the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended.

Under the Act, the Secretary of the Army has been delegated the authority to dispose of excess real property and facilities located at a military installation being closed or realigned. The Army is required to comply with the National Environmental Policy Act during the process of property disposal and must prepare appropriate analyses of the impacts of disposal and, indirectly, of the reuse of the property on the environment. The ROD and the FEIS satisfy requirements of the law to examine the environmental impacts of disposal and reuse of the Tooele BRAC parcel.

Encumbered disposal involves the transfer of property to others with use restrictions imposed by the Army. The ROD concludes that surplus property will be conveyed, subject to restrictions identified in the FEIS, that relate to the following: measures to protect ground water quality, utilities interdependencies, and remedial activities. The Army will impose reservations or deed restrictions, as necessary and appropriate, to protect human health, the environment, and public safety.

The Army has taken all practicable measures to avoid or minimize environmental harm associated with its preferred alternative of encumbered property disposal. The Army will continue to work with individual future owners to avoid, reduce, or compensate for adverse impacts that might occur as

a result of disposal. Mitigation measures for reuse activities are identified in the FEIS.

ADDRESSES: A copy of the ROD may be obtained by writing Mrs. Shirley Barnett at the U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001 or by calling (703) 617–8172.

Dated: May 16, 1996.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 96–12986 Filed 5–22–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on June 25, 1996 from 2:30 to 4 p.m. in Room 4E630, Pentagon, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on the Planning, Programming and Budgeting Process, Navy modernization strategies, resource allocation, and manpower issues. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12987 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on June 27, 1996 from 9:30 to 11 a.m. at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the final briefing of the Naval Support to the Land Battle Task Force to the Chief of Naval Operations. These matters consititue classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12988 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on July 11, 1996 from 2:30 to 4:00 p.m. at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the final briefing of the Information Assurance Task Force to the Chief of Naval Operations. These matters constitue classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12989 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing

proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 17, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP)—Assessment of Reading, Writing, Civics and the Arts.

Frequency: One-time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 87,500.

Burden Hours: 45,953.

Abstract: The NAEP, known as the Nation's Report Card, is the only national representative assessment of student achievement. It collects nationally comparable assessment results which are linked to student's background characteristics, characteristics of schools and teachers. This clearance request is clearance for the 1997 field test and for the 1998 full scale study which will focus on achievement in reading, writing, and civics. In the arts, the small scale but nationally representative sample of eighth grade students will be assessed using materials which were tested in the 1995 field testing.

[FR Doc. 96–12929 Filed 5–22–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 24, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 17, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Indian Education Formula Grant Program Application.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 1,275.

Burden Hours: 38,450.

Abstract: Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies is used to determine eligibility and amount of award for projects funded.

[FR Doc. 96–12930 Filed 5–22–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–510]

Information Collection Submitted for Review and Request for Comments

May 17, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Copies of the collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: *Abstract:* The information collected under the requirements of FERC–510 ''Application for the Surrender of a Hydropower License'' (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of Part 1, Sections 4(e), 6 and 13 of the Federal Power Act, 16 U.S.C. 797(e), 799 and 806. Section 4(e) gives the Commission the authority to issue licenses for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of the licenses including the revocation and/or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Sections 6.1 through 6.4.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	10 hours	100 hours.

Estimated cost burden to respondents: 100 hours/2,087 hours per year×$102,000 per year=$4,887.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12917 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–005]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 1996:

Fourth Revised Sheet No. 90
Original Sheet No. 90A
Second Revised Sheet No. 103
Third Revised Sheet No. 112
Third Revised Sheet No. 119
Third Revised Sheet No. 120
Third Revised Sheet No. 121
Third Revised Sheet No. 122
Original Sheet No. 122A
Second Revised Sheet No. 123
Third Revised Sheet No. 153
First Revised Sheet No. 153A

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's April 25, 1996 ''Order Accepting and Suspending Compliance Filing, Subject to Condition'' in the captioned proceeding. ANR states that the revised tariff sheets address directed changes to ANR's tariff provisions regarding the segmentation of capacity.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.209 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12907 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–998–000]

Cenerprise, Inc.; Notice of Filing

May 17, 1996.

Take notice that on March 25, 1996, Cenerprise, Inc. tendered for filing an amendment in the above-referenced docket.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1996. 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. 96–12921 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–289–000, CP96–335–000, CP96–506–000, CP96–288–000]

Colorado Interstate Gas Company, Trailblazer Pipeline Company Wyoming Interstate Gas Company, Ltd.; Notice of Technical Conference

May 17, 1996.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10:00 a.m. on June 13, 1996, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern relating to the parties' proposals to construct and operate new and/or additional compression facilities, as well as Colorado Interstate Gas Company's proposal to acquire and hold capacity on Trailblazer Pipeline Company and Wyoming Interstate Gas Company, Ltd. All interested parties are invited to attend. For additional information, interested parties may call Michael J. McGehee at (202) 208–2257.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12914 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–190–002]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

May 17, 1996.

Take notice that on May 15, 1996, Colorado Interstate Gas Company (CIG), tendered for filing revised tariff sheets and to withdraw tariff sheets filed May 10, 1996, to its FERC Gas Tariff, First Revised Volume No. 1.

CIG states that the new tariff sheets are filed to correct errors in the sheets filed May 10, 1996 and to comply with Ordering Paragraph (C) of the Order issued April 15, 1996 in Docket No. RP96–190–000. CIG discovered that the May 10, 1996 filed tariff sheets erroneously included two paragraphs at the end of Substitute Original Sheet No. 380 and some other minor wording errors and is filing herein to withdraw those tariff sheets (Substitute First Revised Sheet No. 379 and Substitute Original Sheet No. 380. CIG is filing herein corrected tariff sheets.

CIG states that the tariff sheets filed May 10, 1996 were filed in accordance with the April 25, 1996 Order. Article 38 of the General Terms and Conditions of the Tariff was revised to state that new and existing Shippers that pay the maximum recourse rates have the same right to capacity as a Shipper willing to pay the higher negotiated rate. In addition, the revised tariff sheets state that negotiated rates do not apply as the price cap for capacity release transactions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.209 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12916 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–363–006]

El Paso Natural Gas Company; Notice of Filing

May 17, 1996.

Take notice that on May 14, 1996, El Paso Natural Gas Company (El Paso) submitted schedules in support of the proposed fuel charge percentages to be assessed for transportation services on its mainline system. El Paso requested that upon approval and implementation of its proposed Settlement, the Commission promptly issue an order accepting the fuel charges proposed therein so that El Paso may implement such charges not later than January 1, 1997.

El Paso states that Article VIII, Fuel, of its Stipulation and Agreement in Settlement of Rate and Related Proceedings (Settlement) provides for the periodic adjustment of El Paso's system-wide fuel charge during the term of the Settlement. Specifically, paragraph 8.2 provides that not later than 60 days after filing the Settlement, El Paso will file to adjust its fuel charges based on actual fuel usage experienced on its system during the calendar years 1994 and 1995, to be effective not later than January 1, 1997.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12906 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–270–001]

Mid Continent Market Center, Inc., Complainant v. Panhandle Eastern Pipe Line Company, Respondent; Notice of Amended Complaint

May 17, 1996.

Take notice that on May 13, 1996, Mid Continent Market Center, Inc. (Mid Continent), P.O. Box 889, 818 Kansas Avenue, Topeka, Kansas, 66601, filed an amended complaint in Docket No. Rules of Practice and Procedure. Mid Continent charges Panhandle Eastern Pipe Line Company (Panhandle) with undue discrimination and anticompetitive behavior for its failure to timely agree to interconnect facilities and its apparent improper classification of the proposed receipt point in Panhandle's Field Zone rather than in Panhandle's Market Zone. The details of Mid Continent's allegations are more fully set forth in the amended complaint which is on file with the Commission and open to public inspection.

The Commission previously issued a Notice of Complaint in Docket No.

CP96–270–000 on April 18, 1996, (61 *FR* 18132, April 24, 1996) describing Mid Continent's operations and the facilities which are the subject of this amended complaint. Mid Continent now alleges that certain assumptions upon which it based its initial complaint have been proven wrong. However it still believes the Panhandle is unnecessarily delaying an agreement with Mid Continent to interconnect. Further, Mid Continent says that the delay is a continuation of anticompetitive behavior on Panhandle's part.

Mid Continent says that the purpose of the amended complaint is to raise a new issue—Panhandle's apparent improper classification of the proposed receipt point in Panhandle's Field Zone, rather than in Panhandle's Market Zone. The existing facilities which Mid Continent intends to buy from KN Interstate Gas Transmission Company (KN's Haven Line) are already connected to Panhandle. Mid Continent says that KN's Haven Line is connected to Panhandle at Panhandle's Haven Compressor Station, which is the dividing line between Panhandle's Field Zone and Panhandle's Market Zone. Mid Continent claims that various Commission orders and filings show that KN's Haven Line is connected to the discharge side of Panhandle's Haven Compressor Station, thus in Panhandle's Market Zone. However, Mid Continent says that Panhandle now ''considers'' that KN's Haven Line to be connected to Panhandle at the suction side of Panhandle's Haven Compressor Station, thus in Panhandle's Field Zone.

Mid Continent asks that the Commission to rule that KN's Haven Line is connected to Panhandle in Panhandle's Market Zone and to require Panhandle to give Mid Continent a written statement about the operating conditions Mid Continent will be required to meet to inject gas into Panhandle's system on the discharge side of Panhandle's Haven Compressor Station. Mid Continent seek expeditious relief so that Panhandle does not unduly benefit from further delays, Absent the above requested relief, Mid Continent seeks a full evidentiary hearing on an expedited basis.

Any person desiring to be heard or to make protest with reference to the amended complaint should on or before June 10, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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. Answers to the amended complaint are also due on or before June 10, 1996. Any person which filed a motion to intervene in Docket No. CP96–270–000 need not file again to become a party to the amended complaint.)

Lois D. Cashell,

Secretary.

[FR Doc. 96–12918 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–518–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

May 17, 1996.

Take notice that on May 13, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–518–000 a request pursuant to Section 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain facilities in the State of Arkansas. NGT makes such request, under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–348–001, 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 inspection.

Specifically, NGT is proposing to construct and operate a 1-inch tap and 1-inch first-cut regulator on NGT's Line J in Craighead County, Arkansas. NGT indicates that the proposed facilities will be constructed within NGT's existing right-of-way. NGT declares that the facilities will be used to deliver gas to ARKLA, which is a distribution division of NorAm Energy Corp. It is estimated that approximately 640 MMBtu annually will be delivered to this delivery tap, and approximately 8 MMBtu on a peak day. NGT implies that the volumes proposed to be delivered are within ARKLA's existing entitlements.

NGT estimates the construction cost of this project to be $2,700, and states that ARKLA has agreed to reimburse NGT for those cost. NGT indicates that ARKLA will construct a 1½ inch U-Shape meter and convey it to NGT. It is further stated that NGT will own and operate the tap, first-cut regulator and meter.

Any person or the Commission's staff may, within 45 days after 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 Section 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 therefor, 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. 96–12920 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–237–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1996:

Seventh Revised Sheet Number 156
Eighth Revised Sheet Number 157

Northern Border states that it proposes to increase the Maximum Rate from 4.203 cents per 100 Dekatherm-Miles to 4.224 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.088 cents per 100 Dekatherm-Miles to 2.198 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border asserts that the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12904 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–521–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

May 17, 1996.

Take notice that on May 15, 1996, Northern Border Pipeline Company (NBPC), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–521–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to Minnesota Corn Processors (MCP) in Lyons County, Minnesota, under NBPC's blanket certificate issued in Docket No. CP84–420–000 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.

NBPC proposes to install 120 feet of 8-inch yard piping and associated valves and fittings at the site of its Marshall Measurement Station located in Lyons County, Minnesota. The estimated cost of the facility is $126,000. MCP will reimburse NBPC for the actual installed cost of the proposed facilities. NBPC will deliver to MCP up to 20,000 Mcf on a peak day and an estimated 4,015,000 Mcf annually.

Any person or the Commission's staff may, within 45 days after 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 Section 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. 96–12912 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–336–001]

Northern Natural Gas Company; Notice of Amendment to Application

May 17, 1996.

Take notice that on May 14, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–336–001 an amendment to its application pursuant to Section 7(c) of the Natural Gas Act for authorization to operate two existing compressor units at their design NEMA horsepower level, all as more fully set forth in the amendment that is on file with the Commission and open to public inspection.

Northern proposes to operate compressor Units #1 and #2 at its Galena compressor station, on the East Leg of its mainline system, at their rated NEMA horsepower. Northern states that the proposal would involve operating the two units at 3,800 horsepower each, instead of at 3,500 horsepower which is currently authorized, and would result in maintaining reliable service while resulting in greater operational efficiencies and flexibility of the compressor station.

Northern explains that its original application provided not only for the above proposal, but also for the replacement of compressor Unit #2 since it was of the same age and comparable condition to compressor Unit #1 which failed in February 1996 and was replaced pursuant to § 2.55 of the Commission's Regulations. However, Northern states that, on or about April 30, 1996, compressor Unit #2 also failed and it too has been replaced under the provisions of § 2.55.[1] Consequently, Northern has amended its application to reflect that the proposal no longer involves an abandonment or replacement of facilities, and, consistent therewith, Northern is withdrawing Exhibits K, N, P, and Y that were submitted with its original application.

Any person desiring to be heard or to make any protest with reference to said amendment to the application should on or before June 7, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 the jurisdiction conferred upon the Federal Energy 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 the amended application 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 Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12913 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–8–000]

Pacific Gas and Electric Company; Notice of Petition for Rate Approval

May 17, 1996.

Take notice that on May 1, 1996, Pacific Gas and Electric Company (Pacific Gas and Electric) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve, as fair and equitable, the following rates for certain

[1] The cost of the activities will be accounted for pursuant to § 2.55.

interstate parking and lending services, as described below, performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA):

Parking:
Minimum Daily Rate ($/Dth): $0.00
Maximum Daily Rate ($/Dth): $0.1071
Maximum Annual Transaction Charge ($/Dth): $0.6083
Lending:
Minimum Daily rate ($/Dth): $0.00
Maximum Daily Rate ($/Dth): $0.1071
Maximum Annual Transaction Charge ($/Dth): $0.6083

Pacific Gas and Electric's mailing address is 77 Beale Street, mail Code B30A, San Francisco, CA 94105.

Pacific Gas and Electric's petition states it is a Hinshaw pipeline within the meaning of Section 1 (c) of the Natural Gas Act (NGA), transporting and distributing gas throughout large portions of northern and central California to numerous residential, industrial, and agricultural gas consumers. On June 21, 1994, the Commission issued Pacific Gas and Electric a limited jurisdiction blanket certificate under Part 284.224 of the regulations to engage in the sale, transportation, and assignment of natural gas subject to the NGA in the same manner that intrastate pipelines are authorized to engage in such activity.

This petition is intended to establish rates for new interruptible parking and lending services on Pacific Gas and Electric's pipeline system within its service territory. These services will be designated as ''market center'' or ''hub'' services as part of its newly created Golden Gate Market Center. Parking provides customers with temporary storage of gas on an interruptible basis. Lending provides interruptible temporary loans of gas from Pacific Gas and Electric's system. These services will be offered at the points Pacific Gas and Electric's system interconnects with interstate pipelines, and at its Kern River Station. Pacific Gas and Electric proposes an effective date of June 1, 1996.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 3, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12908 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2019–000]

Pacific Gas and Electric Co.; Notice of Authorization for Continued Project Operation

May 17, 1996.

On May 5, 1994, Pacific Gas and Electric Company, licensee for the Utica Project No. 2019, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2019 is located on the North Fork Stanislaus River and Silver, Beaver, Mill, and Angels Creeks in Calaveras. Toulumne, and Alpine Counties, California.

The license for Project No. 2019 was issued for a period ending May 8, 1996. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2019 is issued to Pacific Gas and Electric Company for a period effective May 9, 1996, through May 8, 1997, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 8, 1997, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Utica Project No. 2019 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12910 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–116–001]

South Georgia Natural Gas Company; Notice of Revised Refund Report

May 17, 1996.

Take notice that on April 15, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing with the Federal Energy Regulatory Commission a revised refund report of the interruptible transportation (IT) revenues from the 1994–95 winter season. South Georgia states that the revised refund report is in compliance with the Commission's order issued March 14, 1996, in Docket No. RP96–116–000.

South Georgia states that the report reflects a one-time adjustment of the IT revenue credits to South Georgia's firm shippers, with the Municipal Gas Authority and its member cities being treated as a single entity when determining the allocation of the IT revenue credits. South Georgia states that upon the Commission's approval of the revised refund calculation, South Georgia will make adjustments to each affected shipper's bill.

South Georgia states that a copy of the revised refund report was sent to each of South Georgia's affected shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.21). All such motions or protests must be filed on or before May 24, 1996. 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. 96–12905 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–238–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A attached to the filing and requests the tariff sheets to be effective June 15, 1996.

Texas Gas states that this filing is being made to clean up Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect various revisions that include: policies established by Order No. 582; correction of typographical errors and housekeeping items; updates since the initial issuance of Volume No. 1, and clarifications or minor changes specifying the company's current practices which have developed since the implementation of Order No. 636 in November, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

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, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12903 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–7–000]

Transok, Inc.; Notice of Petition for Rate Approval

May 17, 1996.

Take notice that on May 1, 1996, Transok, Inc. (Transok), filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable rates for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on Transok's Oklahoma Anadarko System.

Transok proposes a new system-wide maximum rate for interruptible service of $0.2541 per MMBtu delivered. Transok will also charge each shipper the shipper's pro rate share of actual compressor fuel plus 0.5 percent per volumes delivered for system losses. Transok proposes an effective date of May 1, 1996.

Transok states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates two intrastate pipeline systems in the State of Oklahoma (the Anadarko System and the Traditional System), and one system in the State of Louisiana. Transok here proposes rates for the Anadarko System only.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before June 3, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12909 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–52–000, et al.]

Municipal Electric Authority of Georgia v. Georgia Power Company, et al.; Electric Rate and Corporate Regulation Filings

May 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Municipal Electric Authority of Georgia v. Georgia Power Company

[Docket No. EL96–52–000]

Take notice that on May 10, 1996, the Municipal Electric Authority of Georgia (MEAG) filed a Complaint and Motion for Expedited Relief against Georgia Power Company (GPC) under Section 205 and 206 of the Federal Power Act. MEAG is seeking early termination of the obligations between MEAG and GPC arising from GPC's partial requirements tariff and related agreements on the grounds that said agreements are unjust and unreasonable. MEAG is also seeking refunds from GPC for violations of the filed rate doctrine and for the improper accounting practices utilized by GPC in applying the formulary rate set forth in the tariff.

Comment date: June 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER95–487–000]

Take notice that on May 6, 1996, Union Electric Company tendered for filing an Interchange Agreement dated June 10, 1994, between the United States of America, as represented by the Administrator, Southwestern Power Administration (SPA) and Union Electric Company (UE). UE asserts that the agreement provides for the exchange of power and energy between the parties.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. NORSTAR Energy Limited Partnership

[Docket No. ER96–10–001]

Take notice that on May 9, 1996, NORSTAR Energy Limited Partnership tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company

[Docket No. ER96–1059–000]

Take notice that on May 9, 1996, Orange and Rockland Utilities, Inc., on

behalf of itself and its wholly-owned subsidiaries Rockland Electric Company and Pike County Light & Power Company (collectively ''Orange and Rockland'') tendered for filing a compliance filing in the above referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Montana Power Company

[Docket No. ER96–1437–000]

Take notice that on May 7, 1996, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission an amendment to its original filing in the above referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Boroughs of Lansdale Blakely Catawissa, Duncannon, Ephrata, Hatfield, Kutztown, Lehighton, Mifflinburg, Olyphant, Perkasie, Quakertown, St. Clair, Schuylkill Haven, Watsontown and Weatherly, Pennsylvania

[Docket No. TX96–9–000]

On May 9, 1996, the Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Ephrata, Hatfield, Kutztown, Lehighton, Mifflinburg, (Olyphant, Perkasie, Quakertown, St. Clair, Schuylkill Haven, Watsontown and Weatherly, Pennsylvania (Pennsylvania Boroughs'' or ''Boroughs'') filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Pennsylvania Power & Light Company (PP&L) to provide transmission services to the Boroughs without seeking to assess any stranded investment costs, pursuant to Sections 211 and 212 of the Federal Power Act.

In their application, the Boroughs seek to obtain a ruling as to whether PP&L can impose a future stranded investment charge on the Boroughs as a condition for using PP&L's transmission system to obtain alternate sources of power upon the termination of the existing supply contracts between PP&L and the Boroughs.

Comment date: June 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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. 96–12922 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1725–000, et al.]

UtiliCorp United Inc., et al.; Electric Rate and Corporate Regulation Filings

May 16, 1996.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ER96–1725–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. ER96–1726–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ER96–1727–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER96–1728–000]

Take notice that on May 3, 1996, Western Resources, Inc., tendered for filing revised Exhibits 4A to the Transmission Agreement with Kansas Gas and Electric Company, WestPlains Energy, a division of UtiliCorp United, Inc., and Missouri Public Service, a division of UtiliCorp United, Inc. Western Resources states that the revised exhibits reflect updated loss amounts associated with transmission services rendered to each party with respect to each party's ownership in the Jeffrey Energy Center under various load conditions. Western Resources has requested that the revised exhibits become effective on June 1, 1996.

Copies of the filing were served upon Kansas Gas and Electric Company, WestPlains Energy, a division of UtiliCorp United, Inc., Missouri Public Services, a division of UtiliCorp United, Inc., and the State Corporation Commission of the State of Kansas.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Milford Power Limited Partnership

[Docket No. ER96–1729–000]

Take notice that on May 3, 1996, Milford Power Limited Partnership submitted for filing under § 205 of the Federal Power Act (16 U.S.C. 824d) and Part 35 of the Commission's Regulations (18 CFR Part 35) an Amended and Restated Power Purchase Agreement between New England Power Company and Milford Power Limited Partnership (Exhibit A) and certain earlier amendments to that Power Purchase Agreement. Copies of the filing have been served on the Massachusetts Department of Public Utilities and New England Power Company.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Houston Lighting & Power Company

[Docket No. ER96–1730–000]

Take notice that on May 3, 1996, Houston Lighting & Power Company (HL&P), tendered for filing executed transmission service agreements (TSAs) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of economy energy and emergency power TSAs with (1) Koch Power Services, Inc. (Koch) and (2) Federal Energy Sales, Inc. (FES) providing for the transmission of energy to be scheduled over the East HVDC Interconnection. HL&P has requested an effective date of May 3, 1996.

Copies of the filing were served on Koch, FES and the Public Utility Commission of Texas.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Engineered Energy Systems Corporation

[Docket No. ER96–1731–000]

Take notice that on May 6, 1996, Engineered Energy Systems Corporation (EESCOR), petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) a disclaimer of jurisdiction over EESCOR's power brokering activities; (3) acceptance of EESCOR's Rate Schedule FERC No. 1; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in EESCOR's petition on file with the Commission.

EESCOR states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where EESCOR acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER96–1732–000]

Take notice that on May 6, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Firm Transmission Service Agreements with Utilicorp United Inc. (Utilicorp) dated April 5, 1996, Western Power Services, Inc. (Western Power) dated April 22, 1996, and Illinova Power Marketing, Inc. (Illinova) dated April 26, 1996, and Non-Firm Transmission Service Agreements with Utilicorp dated April 5, 1996, Western Power dated April 22, 1996, and Illinova dated April 26, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of April 5, 1996 for the Agreements with Utilicorp, April 22, 1996 for the Agreements with Western Power, and April 26, 1996 for the Agreements with Illinova, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Utilicorp, Western Power, Illinova, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER96–1733–000]

Take notice that on May 6, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a Joint Operating and Maintenance Agreement between itself and Madison Gas and Electric Company (MG&E).

The Agreement documents the procedures for constructing, operating, and maintaining transmission and distribution facilities in Dane County. The parties request an effective date of February 14, 1996 and accordingly seek waiver of the Commission's notice requirements.

Copies of this filing have been served upon MG&E and the Public Service Commission of Wisconsin.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER96–1734–000]

Take notice that on May 6, 1996, Public Service Company of Colorado (Public Service), tendered for filing a Letter Agreement to its Power Supply Agreement (PSA) with Holy Cross Electric Association, Inc. (Holy Cross) designated as Public Service Rate Schedule FERC No. 52. This Letter Agreement allows Public Service and Holy Cross to use the loss percentage specified in Schedule 2 of the Network Transmission Service Tariff designated as Public Service's FERC Electric Tariff, Original Volume No. 4. Public Service requests that this filing be made effective January 1, 1996.

Copies of the filing were served upon Holy Cross Electric Association, Inc., the Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. GDK Corporation

[Docket No. ER96–1735–000]

Take notice that on May 6, 1996, GDK Corporation (GDK), tendered for filing, pursuant to Rule 207 of the Commission's Rules and Regulations, 18 CFR 385.207, a Petition for Order Approving Rate Schedule and Granting Waivers. GDK requests that its proposed FERC Rate Schedule No. 1 be made effective July 1, 1996.

The proposed rate schedule would allow GDK to charge market-based rates for the sales it intends to make to purchasers for resale. GDK also asks the Commission to waive certain of its regulatory and reporting requirements.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER96–1736–000]

Take notice that on May 6, 1996, Kansas City Power & Light Company (KCPL), tendered for filing Amendatory Agreement No. 2 to Wholesale Firm Power Agreement between KCPL and the Missouri Public Service, a division of Utilicorp United, Inc., dated April 22, 1996, and associated Service Schedule. KCPL states that the Amendatory Agreement revises the Agreement pursuant to KCPL's Open Season.

KCPL request waiver of the Commission's notice requirements.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER96–1737–000]

Take notice that on May 6, 1996, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and NORAM Energy Services, Inc. (NORAM).

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric & Gas Company also requested waiver of notice in order that the contract be effective on May 15, 1996.

Copies of this filing were served upon NORAM Energy Services, Inc.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER96–1738–000]

Take notice that on May 6, 1996, Northeast Utilities Service Company (NU), on behalf of Public Service Company of New Hampshire (PSNH) and the other Northeast Utilities system operating companies (NU System Companies), tendered for filing with the Federal Energy Regulatory Commission rate schedules in connection with a two-year program initiated by the New Hampshire Public Utilities Commission (NHPUC), known as the New Hampshire Retail Competition Pilot Program.

NUSCO requests an effective date for the rate schedules of May 28, 1996, or such other later date that is consistent with Section 11 of a Joint Recommendation between PSNH and the Staff of the NHPUC. NUSCO requests that the Commission waive the 60-day notice requirement in § 205 of the Federal Power Act as necessary to permit these rate schedules to be placed into effect on such date.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER96–1739–000]

Take notice that on May 6, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1996 between Cinergy, CG&E, PSI and Eastex Power Marketing, Inc. (EPMI).

The Interchange Agreement provides for the following service between Cinergy and EPMI:

1. Exhibit A—Power Sales by EPMI
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPMI have requested an effective date of May 13, 1996.

Copies of the filing were served on Eastex Power Marketing, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER96–1740–000]

Take notice that on May 7, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 15, 1996 between Cinergy, CG&E, PSI and DuPont Power Marketing, Inc. (DuPont).

The Interchange Agreement provides for the following service between Cinergy and DuPont:

1. Exhibit A—Power Sales by DuPont
2. Exhibit B—Power Sales by Cinergy

Cinergy and DuPont have requested an effective date of May 13, 1996.

Copies of the filing were served on DuPont Power Marketing, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Montaup Electric Company

[Docket No. ER96–1741–000]

Take notice that on May 7, 1996, Montaup Electric Company (Montaup), filed (1) an Exhibit A for Montaup's transmission of a short-term energy purchase by Taunton Municipal Lighting Plant (Taunton) from Central Vermont Public Service Corporation and (2) Notices of Cancellation of service agreements under Original Volume No. 2 which have expired by their terms.

The Taunton transaction became effective on March 16, 1996 and terminated on March 31, 1996. The Exhibit A was filed pursuant to Montaup's service agreement with Taunton under Montaup's FERC Electric Tariff, Original Volume No. 2.

Montaup requests waiver of the 60-day notice requirement so that the Exhibit A may be allowed to become effective March 16, 1996. Montaup seeks such waiver on the ground that the filing provides for terms and conditions of a transaction pursuant to a service agreement.

Montaup requests that the Notices of Cancellation by allowed to become effective upon the expiration dates of the agreements stated in the Notices. Future service is available under Montaup's open access tariffs which became effective April 21, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Lighting Company

[Docket No. ER96–1743–000]

Take notice that on May 7, 1996, Long Island Lighting Company (LILCO), tendered for filing service agreements entered into as of the following dates by LILCO and the following parties:

Date	Purchaser
2/8/96 ...	Enron Power Marketing, Inc.
2/13/96	Coastal Electric Services Company
2/13/96	New York Power Authority
2/23/96	CNG Power Services Corporation
2/23/96	PECO Energy Company—Power Team
2/23/96	Phibro, Inc.
2/23/96	KCS Power Marketing, Inc.
2/29/96	Sonat Power Marketing Inc.
3/4/96 ...	Aquila Power Corporation
3/4/96 ...	Maine Public Service Company
3/26/96	LG&E Power Marketing Inc.
3/27/96	Rainbow Energy Marketing Corporation
3/28/96	KN Marketing, Inc.
4/10/96	Village of Greenport
4/19/96	Inc. Village of Rockville Centre
5/1/96 ...	Vitol Gas & Electric LLC

These service agreements supplement a Power Sales umbrella tariff accepted for filing on April 4, 1996 and made effective August 11, 1995 by the Commission in Docket No. ER95–1518–000.

In accordance with the policy set forth in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,081 (1993), LILCO requests the Commission to make the Agreements effective as of April 10, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, LILCO has requested waiver of the sixty-day notice period in 18 CFR 35.2(e).

A copy of this filing was provided to the customers involved and to the New York State Public Service Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Indeck Pepperell Power Associates, Inc.

[Docket No. ER96–1744–000]

Take notice that on May 7, 1996, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell) submitted for filing an Amendment (Amendment) to the April 17, 1996 Short-Term Power Purchase Contract between New England Power Company (NEP) and Indeck Pepperell.

Indeck Pepperell states that its filing is in accordance with Part 35 of the Commission's regulations. Indeck Pepperell requests a waiver of the Commission's notice requirements so that the Amendment may become effective on May 8, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1745–000]

Take notice that on May 8, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 10 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of May 1, 1996 to The Cleveland Electric Illuminating Company and Toledo Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1746–000]

Take notice that on May 8, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreements to add Federal Energy Sales, Inc. and IGM, Inc. as Customers under Allegheny Power's Point-to-Point Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. Allegheny Power proposes to make service available to Federal Energy Sales, Inc. and IGM, Inc. as of May 1, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool

[Docket No. ER96–1747–000]

Take notice that on May 8, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by ANP Energy Direct company (ANP), Multi-Energies U.S.A., Inc. (Multi-Energies) and Working Assets Funding Service, Inc. (Working Assets). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit ANP, Multi-Energies and Working Assets to join the approximately 80 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make ANP, Multi-Energies and Working Assets Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996 for commencement of participation in the Pool by ANP, Multi-Energies and Working Assets.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER96–1750–000]

Take notice that on May 7, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Original Volume No. 5, an executed Service Agreement between PGE and Eugene Water & Electric Board.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1995 (Docket NO. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective April 9, 1996.

Copies of this filing were served upon Eugene Water & Electric Board.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER96–1751–000]

Take notice that on May 8, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Bridgestone Firestone, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Illinois Power Company

[Docket No. ER96–1752–000]

Take notice that on May 8, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Caterpillar, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1753–000]

Take notice that on May 8, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with KCS Power Marketing, Inc. (KCS) to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour. Energy and capacity sold by KCS will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon KCS.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Power Company

[Docket No. ER96–1755–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet under Service Agreement No. 3 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Power Company

[Docket No. ER96–1756–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet supplementing the Service Agreement for Market Rate (Schedule MR) Sales between Duke and Entergy Services, Inc. under Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Duke Power Company

[Docket No. ER96–1757–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and LG&E Power Marketing Inc. and a Schedule MR Transaction Sheet thereunder.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Power Company

[Docket No. ER96–1758–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Agreement and Transaction Sheet under Service Agreement No. 4 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. NRG Generating (Parlin) Cogeneration Inc.

[Docket No. ES96–27–000]

Take notice that on May 9, 1996, NRG Generation (Parlin) Cogeneration Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue a term note in an aggregate principal amount not to exceed $155 million and debt service line of credit notes in an aggregate principal amount not to exceed $5 million at any one time outstanding. The final maturity would be fifteen (15) years from the date of initial issuance of the term note.

Comment date: June 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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. 96–12923 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1951–036]

Georgia Power Company; Notice of Availability of Environmental Assessment

May 17, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to grant a permit to Mr. Peter Lenzenhuber for dredging at the Sinclair Project, FERC No. 1951. The project is located on Lake Sinclair in Putnam County, Georgia. The primary purpose of the dredging would be to increase recreational access to a proposed subdivision, Edgewater Point Estates.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C., 20426. Copies can also be obtained by calling the project manager, Heather Campbell at (202) 219–3097.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12911 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–164–000 and CP96–254–000]

Tennessee Gas Pipeline Company and Distrigas of Massachusetts Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Tennessee Domac Projects; Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

May 17, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Tennessee DOMAC Projects.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the projects.

Summary of the Proposed Projects

Tennessee Gas Pipeline Company (Tennessee) wants to expand the capacity of its existing facilities to transport up to 90,000 dekatherms of natural gas per day on a firm basis for Distrigas of Massachusetts Corporation (DOMAC). Tennessee requests Commission authorization, in Docket No. CP96–164–000, to construct, operate, and abandon upon the termination of Tennessee's contractual obligations to DOMAC, the following facilities needed to transport those volumes:

- 7.56 miles of 20-inch-diameter natural gas pipeline in Saugus, Revere, Malden, and Everett, Massachusetts;
- One valve station at the northern end of the proposed pipeline in Saugus, Massachusetts; and
- A new meter station and odorization system at the southern end of the proposed pipeline at DOMAC's existing liquefied natural gas (LNG) facility in Everett, Massachusetts.

DOMAC wants to construct additional facilities at its LNG facility in Everett, Massachusetts to increase reliability and meet the anticipated need for increased vaporization capacity. DOMAC requests Commission authorization, in Docket No. CP96–254–000, to construct and operate the following facilities:

- Two vaporization trains, each with a nominal capacity rating of 75 million cubic feet per day;

[1] Tennessee Gas Pipeline Company's and Distrigas of Massachusetts Corporation's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

- About 0.1 mile of natural gas sendout pipeline; and
- Auxiliary equipment located in separate buildings required to operate the vaporization trains, including boilers, water circulation pumps, electrical switchgear, and a distributed control system.

DOMAC stated in its application that although the proposed vaporization facilities are necessary to deliver vaporized LNG into Tennessee's proposed pipeline, its need for additional vaporization capacity is independent of Tennessee's proposal. Therefore, DOMAC proposes to construct the vaporization facilities regardless of Tennessee's action. The Commission staff has elected to analyze the two proposals in the same EA because the Tennessee and DOMAC facilities would be physically connected and would be built within the same general timeframe.

The location of the proposed facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of Tennessee's facilities would require about 67.8 acres of land. About 90 percent of this land is within existing Conrail, Massachusetts Bay Transportation Authority (MBTA), or New England Power Company (NEPCO) rights-of-way. The railroad rights-of-way range in width from 42.5 feet to 122 feet. Tennessee proposes to use all available space in these rights-of-way during construction. The NEPCO right-of-way is about 150 feet wide in the project area. In this area, and where the proposed pipeline would be outside existing rights-of-way, Tennessee proposes to use a 55-foot-wide construction right-of-way. In addition, temporary extra work spaces would be required at various locations adjacent to the construction right-of-way.

Following construction, about 15.0 acres, nearly all of which is within existing rights-of-way, would be maintained as new permanent right-of-way for the pipeline or aboveground facilities. The width of the permanent easement within the railroad rights-of-way would be determined based on negotiations with the MBTA and Conrail. Tennessee proposes to maintain a 30-foot-wide permanent easement within the NEPCO right-of-way and where the pipeline is outside existing rights-of-way. The remaining land would be restored and allowed to revert to its former use. DOMAC's proposed facilities would be constructed within the existing fence lien of DOMAC's LNG facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues it will address in the EA. The staff also requests public comments on its decision to evaluate Tennessee's and DOMAC's proposed facilities in the same EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

- Geology and soils.
- Water resources and wetlands.
- Vegetation and wildlife.
- Threatened and endangered species.
- Land use.
- Cultural resources.
- Public safety.
- Air quality and noise.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, newspapers, libraries, and the Commission's official service list, and those groups and individuals that have expressed an interest in these proceedings. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the projects.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities; our attendance at the Massachusetts Energy Facility Siting Board public hearings in Saugus, Revere, Malden, and Everett; and the environmental information provided by Tennessee and DOMAC. This is a preliminary list of issues and may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Effects of blasting on water wells, structures, septic systems, and natural gas pipelines;
- Crossing of 3 streams and 11 wetlands;
- Crossing of Rumney Marsh, a state-designated Area of Critical Environmental Concern;
- Clearing of trees and disturbance of wildlife habitat;
- Effects of construction on traffic, noise levels, and air quality (particularly, dust);
- Duration of construction;
- Construction near residences along the construction right-of-way and effects on existing and future land uses;
- Right-of-way maintenance;
- Crossing of a Coastal Zone Management Area;
- Crossing of Conservation Land in the Town of Saugus;
- Protection of cultural resources and historic properties;
- Potential to expose contaminated soils;
- Potential increase in shipping of LNG into, and trucking of LNG out of the DOMAC LNG facility;
- Public safety; and
- Cumulative effect of the projects when combined with other developments in the area.

Public Participation and Scoping Meeting

You can make a difference by sending a letter addressing your specific comments or concerns about the projects. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

• Reference Docket Nos. CP96–164–000 and/or CP96–254–000;

• Send a *copy* of your letter to: Ms. Lauren O'Donnell, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–57, Washington, DC 20426; and

• Mail your comments so that they will be received in Washington, DC on or before June 21, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. O'Donnell at the above address.

Beyond asking for written comments, we invite you to attend our public scoping meeting that will be held on June 11, 1996, at 7:00 p.m., at the Saugus High School, Pierce Street, Saugus, Massachusetts. This public meeting will provide you with more detailed information and another opportunity to offer your comments on the proposals. We will also be visiting the project location on June 11 and 12, 1996.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

• The date for filing of timely motions intervene in these proceedings has passed. Therefore, parties now seeking to file late interventions show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed projects is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12915 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–501–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

May 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP96–501–000]

Take notice that, on May 6, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an abbreviated application in Docket No. CP96–501–000, pursuant to section 7(b) of the Natural Gas Act and Section 157.7(a) of the Commission's regulations, for authorization to remove its previously abandoned in-place, 10-inch diameter South Seattle Lateral crossing and adjacent 10-inch diameter lateral loop line crossing of Madsen Creek, in Section 26, T23N, R5E, King County, Washington, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northwest states that it relocated and replaced the above referenced 175-foot long Madsen Creek crossing segments in 1993, pursuant to its blanket certificate authority in Docket No. CP82–433 (20 FERC ¶ 62,412), but did not remove the two replaced and exposed pipeline segments. Instead, these pipeline segments were abandoned in-place in order to avoid further damage to the Madsen Creek ravine.

Northwest states that (as reported in Docket No. CP82–433) it intended to remove these pipeline segments in 1994, as part of the project area restoration, but the planned restoration was not completed and the pipeline segments were not removed, due to Northwest's prolonged negotiations with King County over plans for the restoration and bank stabilization of the Madsen Creek ravine. According to Northwest, it has reached agreement with King County regarding the restoration and bank stabilization plans for the Madsen Creek ravine, and now plans to remove the two exposed pipeline segments in July of 1996. Northwest states that (consistent with the plans negotiated with King County) it seeks the requisite Commission approvals to remove the previously abandoned pipeline segments, and estimates that the project will cost approximately $45,000.

Comment date: June 5, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. K N Interstate Gas Transmission Company

[Docket No. CP96–509–000]

Take notice that on May 7, 1996, K N Interstate Transmission Company (K N Interstate), P. O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP96–509–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate nineteen new delivery taps and appurtenant facilities located in Colorado, Kansas, Nebraska and Wyoming under K N Interstate's blanket certificate issued in Docket No. CP83–140–000 et. al. 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.

K N Interstate states that the proposed delivery points would be located on its main transmission system in Colorado, Kansas, Nebraska and Wyoming. The counties involved are Phillips and Yuma Counties in Colorado; Norton and Scott Counties in Kansas; Adams, Clay, Franklin, Hall, Harlan, Keith, Phelps, Stanton, Thayer and Webster Counties in Nebraska; and Goshen and Platte Counties in Wyoming. These proposed taps will be added as delivery points under an existing transportation service agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate natural gas delivery to direct retail customers.

K N Interstate states that these new delivery facilities are not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery facilities will not have an effect on K N Interstate's peak day and annual deliveries and the total volumes delivered will be within the current maximum transportation quantities set forth in K N Interstate's transportation service agreement with K N.

Comment date: July 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. NorAm Gas Transmission Company

[Docket No. CP96–513–000]

Take notice that on May 8, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–513–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct

and operate certain facilities in Texas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, 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.

NGT proposes to design, install, construct and operate a dual 6 inch meter and appurtenant facilities, 1.5 miles of 8-inch pipeline and a high pressure tap and valve assembly necessary to deliver gas. The proposed delivery lateral will interconnect with NGT's line AM–47 in Russell Survey, Marion County, Texas. This subject line, AM–199, will be used to deliver natural gas to Southwestern Electric Power Company's electric generating plant near Avinger, Texas. The estimated volumes to be delivered to this delivery tap are approximately 12,000 MMBtu per day or an estimated 4,380,000 MMBtu on an annual basis. The subject delivery lateral will be constructed at an estimated cost of approximately $500,985.

Comment date: July 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP96–515–000]

Take notice that on May 8, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–515–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities originally installed for the receipt of transportation gas in Logan, Creek and Payne Counties, Oklahoma under WNG's blanket certificate issued in Docket No. CP82–479–000 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.

WNG proposes to abandon by removal measuring and appurtenant facilities originally installed for receipt of transportation gas from Associated Gas, Inc. located in Logan County, Oklahoma; Engasco, Inc. and PanEnergy Field Services, Inc. located in Creek County, Oklahoma; and TAG Petroleum, Inc. located in Payne County, Oklahoma. WNG states that the subject facilities are no longer needed. WNG estimates the total abandonment cost to be approximately $4,900 with a salvage value of $650.

Comment date: July 1, 1996, in accordance with Standard Paragraph G 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, 888 First Street, N.E., Washington, D.C. 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 Energy 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 Section 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. 96–12919 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review

May 15, 1196.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested an emergency OMB review of the collection with an approval by June 15, 1996.

DATES: Persons wishing to comment on this information collection should submit comments on or before June 3, 1996.

ADDRESS: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via internet at fain_t@a1.eop.gov, and Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy

Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form No.: N/A.

Type of Review: Emergency Collection.

Resopondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 516,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 43,344 hours.

Needs and Uses: Effective July 1, 1996, the current antenna clearance procedures are replaced with a uniform registration procedure that applies to antenna structure owners. Structure owners will receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure.

Collecting the Registration Number will enable the Commission to efficiently maintain a Registration Database, as well as process the applications without unnecessary delay related to antenna structure discrepancies. By entering the Registration Number in the database, FCC's tower clearance processors can immediately locate the information provided by the structure owner regarding the antenna site and ensure the validity and accuracy of the data provided. Without the Registration Number, the FCC's tower clearance processors would be ''guessing'' the structure registration number using coordinates and other date supplied by the applicant, thereby decreasing the integrity of the new Registration database.

The Commission released a Report and Order on November 30, 1995, WT Docket No. 95–5, adopting these new rules to streamline the Commission's antenna structure clearance process. While the Report and Order contained information relative to the Antenna Structure Registration Number requirement, it did not address the necessary notification of additional burden to collect the Registration Number prior to revision of the FCC's application forms.

The Commission is requesting an Emergency clearance by June 15, 1996 to collect the Registration Number with application forms for licensing, effective July 1, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12968 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

May 16, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 22, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collections.

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form No.: N/A.

Type of Review: New Collection.

Resopondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 516,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 43,344 hours.

Needs and Uses: Effective July 1, 1996, the current antenna clearance procedures are replaced with a uniform registration procedure that applies to antenna structure owners. Structure owners will receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure. The Commission will require this Registration Number to be submitted with any of the applications for licensing.

Collecting the Registration Number will enable the Commission to efficiently maintain a Registration Database, as well as process the applications without unnecessary delay related to antenna structure discrepancies. By entering the Registration Number in the database, FCC's tower clearance processors can immediately locate the information provided by the structure owner regarding the antenna site and ensure the validity and accuracy of the data provided. Without the Registration Number, the FCC's tower clearance processors would be ''guessing'' the structure registration number using coordinates and other date supplied by the applicant, thereby decreasing the integrity of the new Registration database.

The Commission released a Report and Order on November 30, 1995, WT Docket No. 95–5, adopting these new rules to streamline the Commission's antenna structure clearance process. While the Report and Order contained information relative to the Antenna Structure Registration Number requirement, it did not address the necessary notification of additional burden to collect the Registration Number prior to revision of the FCC's application forms.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12970 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 17, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 24, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0441.

Title: Section 90.621(b)(4) Selection and assignment of frequencies.

Form No.: N/A.

Type of Review: Revision to an existing collection.

Respondents: Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 33.

Estimated Time Per Response: 1.5 hours per respondent; however the Commission estimates 75% of the respondents will contract out the burden of responding. It will take these respondents approximately 30 minutes to obtain these services.

Total Annual Burden: 25 hours.

Estimated Cost Per Respondent: The Commission estimates 75% of the applicants will file this information electronically. These respondents will incur approximately $69 for on-line filing charges. Respondents filing manually, will incur approximately $1.15 in postal charges. Respondents hiring an attorney or engineer to prepare the information will incur approximately $300 in charges.

Needs and Uses: Applicants wish to locate co-channel systems less than 70 miles from an existing system operating on the same channel may do so upon specific request. If the request falls under a Table provided in the rule, certain information about the co-channel station is required. In this instance no waiver of the short spacing rule is required. If the request is for distances less than those prescribed in the table, a waiver of the short spacing rule is required. The Commission uses the information to determine whether to grant licenses to applicants whose systems do not satisfy mileage separation requirements.

OMB Number: 3060-0110.

Title: Application for Renewal of License for AM, FM, TV Translator or LPTV Station.

Form Number: FCC 303-S.

Respondents: Business or other for-profit.

Type of Review: Revision of an existing collection.

Number of Respondents: 4,658.

Estimated Time Per Response: 2 - 5.5 hours.

Total Annual Burden: 6,230.

Estimated Cost Per Respondent: The Commission estimates 50% of the AM/FM/FM Translator radio broadcast licensees and 75% of the TV/TV translator broadcast licensees will use a communications attorney to complete and file the FCC Form 303–S. This will cost approximately $200 per hour. Licensees must also submit a $115 application fee for each commercial application by a AM/FM/TV broadcast station. The fee for each FM/TV Translator Broadcast station application is $45. Additionally, AM, FM TV or LPTV licensee must give local public notice of the filing of the renewal application. AM/FM/TV stations that are off-the-air must give local public notice by publishing an announcement 6 times in a newspaper of general circulation in the community or area being served. FM/TV Translator stations must give local public notice by publishing an announcement once in a newspaper of general circulation. The cost of this publication is estimated to be $226 per publication.

Needs and Uses: On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996. Section 204 of this Act directs the Commission to collect new information from commercial and noncommercial television station licensees filing their renewal applications after May 1, 1995. These renewal applicants must submit an Exhibit summarizing the written comments and suggestions received from the public that ''comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming.'' Until the FCC 303-S is revised, the Commission will use a supplement to solicit the required information. FCC Form 303-S is used in applying for renewal of license for a commercial or noncommercial AM, FM or TV broadcast station and FM translator, TV translator or Low Power TV broadcast stations. It can also be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV or LPTV station. The data is used by FCC staff to assure that the necessary reports connected with the renewal application have been filed and that licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station. The data collected with respect to violent programming will be used by the Commission in determining what, if any, changes in the Commission's policies and regulations are required.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12966 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Investment in Leeway Securities; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of Statement of Policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its policy statement concerning bank investments under state leeway laws (Statement). The Statement indicates that the FDIC will not criticize investments of a civic or community nature if they meet reasonable limits set out in the Statement. The FDIC is rescinding the Statement because it is now outmoded. The rescission does not reflect any substantive change in the FDIC's supervisory attitude toward this type of investment.

EFFECTIVE DATE: This Statement is rescinded effective May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Manager, Division of Supervision (202) 898–6911; Gerald J. Gervino, Senior Attorney, (202) 898–3723, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Statement is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The Statement was published on August 4, 1972, 37 FR 16228 and amended on March 7, 1974, 39 FR 8956. The Statement was designed to clarify the FDIC's position with regard to bank investments under state leeway laws. Leeway laws were adopted by many states to give depository institutions a way to make direct investments in civic or community related projects that would otherwise be prohibited under the standard bank or thrift charter. It was felt that financial institutions were receiving inconsistent messages from their regulators. While community beneficial projects were encouraged by state agencies, the credit quality of the related investments was being criticized. The FDIC did not want to inhibit banks from making investments that were primarily of a civic or community nature. Therefore the Statement indicated that FDIC examiners would not criticize these leeway investments provided they were made within reasonable limits established by state law and aggregated no more than 10 percent of capital and surplus, whichever was less.

Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. 1831a, prohibits equity investments by an insured state bank if the investment is not of a type and in an amount that is permissible for a national bank. 12 CFR part 362 implements this statutory provision. Both the statute and the regulation contain exceptions for investments as a limited partner in a partnership, the sole purpose of which is the acquisition, rehabilitation or new construction of qualified housing projects. In addition, the National Bank Act was amended since the last amendment to the Statement in 1974 to expressly provide authority for a national bank to make investments that are designed to primarily promote the public welfare. Such investments can be made up to a maximum of 10 percent of unimpaired capital and surplus. (12 U.S.C. 24 (Eleventh). Finally, community welfare investments are encouraged under the FDIC's regulations implementing the Community Reinvestment Act which was enacted by Congress subsequent to the adoption of the agency's Statement. Consistent with that Act and the FDIC's regulations, the FDIC will generally not criticize commercially viable community welfare investment. Thus, the rescission of the Statement does not signal any change in the manner in which the FDIC evaluates investments which are the subject of the current Statement. In view of this current statutory and regulatory direction, the Statement is no longer necessary.

For the above reasons, the Statement is hereby rescinded.

By Order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12927 Filed 5–22–96; 8:45 am]

BILLING CODE 6714–01–P

Capital Forbearance; Rescission of Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of policy statement.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its Guidelines for Implementing a Policy of Capital Forbearance (Policy Statement). The Policy Statement provided guidelines for certain well-managed viable banks to apply to the FDIC for capital forbearance. The FDIC is rescinding the Policy Statement because it is now outmoded.

EFFECTIVE DATE: This Policy Statement is rescinded May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Manager, (202) 898–6911, Division of Supervision; Jamey Basham, Counsel, (202) 898–7265, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Policy Statement is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC adopted the Policy Statement on July 7, 1987. 52 FR 26182 (July 13, 1987). The Policy Statement provided guidelines under which certain banks, which were well-managed, solvent and viable but were having difficulty raising needed capital because they served an inadequately diversified economic sector caught in a severe downturn, could apply to the FDIC for capital forbearance. Since all capital improvement plans established under the Policy Statement were required by the Policy Statement's terms to assure capital restoration by January 1, 1995, the Policy Statement serves no further purpose.

Moreover, as part of the Federal Deposit Insurance Corporation

Improvement Act of 1991, Pub. L. 102–242, 105 Stat. 2236, 2253, Congress adopted the prompt corrective action provisions codified in section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, establishing a statutory structure for addressing insured depository institutions with declining capital. This statutory structure does not allow capital forbearance as contemplated in the Policy Statement.

For the above reasons, the Policy Statement is hereby rescinded.

By Order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12926 Filed 5–22–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1105–DR]

Montana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1105–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 29, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13038 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on April 28, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Franklin and St. Clair Counties for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–13014 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Lawrence County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13015 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Madison and Monroe Counties for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13016 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Oral Argument and Opportunity To Submit Amicus Curiae Briefs

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of oral argument and opportunity to submit briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is required to interpret and apply 5 U.S.C. 7116(a) (1) and (3).

SUMMARY: The Federal Labor Relations Authority gives notice that it is scheduling oral argument and providing an opportunity, pursuant to 5 CFR 2429.9 and .26, for all interested persons to submit briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994) and its regulations set forth at 5 CFR part 2423 (1996). The proceeding concerns the extent to which an agency is obligated to furnish facilities and services, under 5 U.S.C. 7116(a) (1) and (3), to a labor organization that is seeking to represent the agency's employees.

ORAL ARGUMENT: The Authority will hold oral argument at 10:00 a.m. on Wednesday, July 10, 1996, in the Second Floor Agenda Room, 607 14th Street, NW., Washington, D.C. 20424–0001. Only the parties to the case will be provided an opportunity to be heard at oral argument, and attendance at the oral argument will be limited because of space constraints. Persons interested in attending the oral argument should notify the Office of Case Control by 5 p.m. on Friday, July 5, 1996. Telephone: FTS or Commercial (202) 482–6540.

BRIEFS: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on Friday, June 28, 1996. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver briefs to James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001.

FORMAT: All briefs shall be captioned ''Social Security Administration, Baltimore, Maryland, Case No. 3–CA–10859, Amicus Brief'' and shall contain separate, numbered headings for each issue discussed. An original and four (4) copies of each brief must be submitted, with any enclosures, on 8½×11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). The designated representatives are: Elaine Kaplan, National Treasury Employees Union, 901 E Street, NW., Washington, D.C. 20004; Laurence Evans, Office of the General Counsel, Federal Labor Relations Authority, 1525 22nd Street NW., Suite 400, Washington, D.C. 20037; Charles A. Hobbie, American Federation of Government Employees, AFL–CIO, 80 F Street, NW., Washington, D.C. 20001; and Ed Novak, Social Security Administration, West High Rise Building, Room G–I–10, 6401 Security Boulevard, Baltimore, MD 21235.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issues on which oral argument will be heard and amicus briefs are being solicited is before the Authority on remand from the United States Court of Appeals for the District of Columbia Circuit. The Authority's decision that was reviewed by the court is Social Security Administration, 45 FLRA 303 (1992). The court's decision is *NTEU* v. *FLRA*, 986 F.2d 537 (D.C. Cir. 1993). Copies of these decisions will be provided, upon request, by mail or facsimile. However, the following summary is offered.

Non-employee organizers of the National Treasury Employees Union (NTEU) sought a permit from the Social Security Administration (SSA) to distribute literature on the public sidewalks of SSA's headquarters complex at Woodlawn, Maryland. The headquarters complex, including the sidewalks, is the property of the General Services Administration (GSA) but, pursuant to a delegation of authority, is managed by SSA. At the time of its permit request, NTEU had not filed a petition seeking to represent any of SSA's employees at the Woodlawn complex. SSA denied the request. NTEU alleged that, by the denial, SSA violated 5 U.S.C. 7116(a) (1) and (3).

The Authority determined that SSA, whose employees were exclusively represented by the American Federation of Government Employees, did not violate either 5 U.S.C. 7116(a)(3) or, in turn, 5 U.S.C. 7116(a)(1), when it denied NTEU's request for a permit. Instead, the Authority concluded that SSA would have violated 5 U.S.C. 7116(a)(3) if it had granted the permit.

The court found that the Authority's application of section 7116(a)(3) raised Constitutional concerns. Accordingly, the court remanded the case to the Authority to consider whether an alternative construction of the Statute can be fashioned that avoids the First Amendment implications raised by the Authority's original decision. In particular, the court directed the Authority to determine whether the sidewalks and other outside areas of SSA's Woodlawn complex constitute SSA's ''facilities,'' within the meaning of section 7116(a)(3). Following the court's remand, the Authority remanded the case to the Regional Director for development of a sufficient record. Social Security Administration, 47 FLRA 1376 (1993), reconsideration denied, 48 FLRA 539 (1993).

In light of the court's order on remand, the Authority invites interested persons to address, *inter alia*, the following questions. Certain of the questions (1–3) are based specifically on the court's decision remanding the case. In view of the court's more general direction that the Statute be construed to avoid Constitutional concerns, question 4 examines whether and how the approach suggested by the court would apply to hypothetical cases varying certain facts presented in this case. Questions 5 and 6 concern alternative approaches to the one suggested by the court to resolve the issues present in this case. Questions 7 and 8 pose more general questions regarding the correct interpretation of section 7116(a)(3). The last question asks how resolution of the issues under section 7116(a)(3) affects whether SSA also violated section 7116(a)(1) of the Statute by interfering with rights of non-employee organizers to conduct organizing activity.

Interested persons are invited to respond to any or all of the following questions:

1. If the Authority were to conclude, as the court suggests, that SSA was not

acting as an employer but instead was acting as GSA's ''building manager'' when it denied NTEU's request for a permit, then what, if any, would be the effect of Authority precedent holding that a non-employer agency can be found to have interfered with protected rights on the issue of whether SSA violated the Statute? See Headquarters, Defense Logistics Agency, Washington, D.C., 22 FLRA 875, 883–84 (1986).

2. Is it relevant and, if so, how is it relevant whether non-labor organizations have been granted access to the areas for which NTEU sought the permit?

3. Is it relevant and, if so, how is it relevant that the ''facilities'' to which NTEU sought access were external, quasi-public areas?

4. If GSA were the employing agency at the Woodlawn complex and NTEU were seeking a permit for purposes of organizing GSA employees, how would the Constitutional concerns identified by the court be avoided by the ''facilities'' analysis it suggested?

5. The Authority, relying on the ruling announced in Department of the Army, United States Army Natick Laboratories, Natick, Mass., 3 A/SLMR 193 (1973) (Natick), has interpreted section 7116(a)(3) as prohibiting an agency from allowing a rival union, lacking equivalent status to an incumbent labor organization, access to the agency's facilities and services. How and why would such access always constitute unlawful sponsorship, control, or assistance under section 7116(a)(3)?

6. Is the approach used by the predecessor to the Authority, the Federal Labor Relations Council, to resolve similar issues under Executive Order 11491, as amended, more consistent with the Statute than the approach set forth in Natick? The Council's approach analyzed whether the agency conduct constituted control of, or interference with a union's independence. See Grissom AFB, 6 FLRC 406 (1978).

7. Is the portion of section 7116(a)(3) that refers to furnishing customary and routine services and facilities an exception to the prohibition on sponsorship, control, or assistance of a labor organization or are there any situations where it creates a requirement that such services and facilities be furnished? For example, in order to avoid ''sponsoring'' an incumbent labor organization, would an agency be required under any circumstances to furnish ordinary facilities and services to a rival?

8. What meaning should be attributed to the phrase ''having equivalent status'' in section 7116(a)(3)?

a. Should this term be applied differently depending upon whether the employees in the agency from whom assistance is sought are represented by a labor organization?

b. Does an agency violate section 7116(a)(3) by furnishing, or failing to furnish, facilities and services to all nonincumbent labor organizations on an impartial basis?

c. Should the Authority reconsider its precedent that ''a petitioning union acquires equivalent status for the purposes of section 7116(a)(3) when an appropriate Regional Director determines, and notifies the parties, that the petition includes a prima facie showing of interest and merits further processing[]''? U.S. Department of Defense Dependents School, Panama Region, 44 FLRA 419, 425 (1992).

9. If the Authority were to conclude on remand that section 7116(a)(3) did not require SSA to reject NTEU's request for a permit, would:

a. Section 7116(a)(3) require that SSA grant NTEU's permit request?

b. SSA's denial of the permit to NTEU's non-employee organizers violate 5 U.S.C. 7116(a)(1)?

c. it result in manifest injustice to hold SSA liable for a violation of either section 7116(a)(3) or section 7116(a)(1) based on approaches not previously articulated?

Dated: May 20, 1996.

For the Authority.

James H. Adams,

Acting Director, Case Control Office.

[FR Doc. 96–13043 Filed 5–22–96; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 96–11]

Haewoo Air & Shipping Co., Ltd. (d/b/a Haewoo Shipping Co., Ltd.); Possible Violations of Section 10(b)(1) of the Shipping Act of 1984; Order of Investigation

Haewoo Air & Shipping Co., Ltd. d/b/a Haewoo Shipping Co., Ltd. (''Haewoo'') is a non-vessel-operating common carrier located in Seoul, Korea. Haewoo maintains a tariff on file with the Commission which provides for service between various Asian countries and the United States.

A review of Haewoo's tariff showed that it contained only one commodity rate in addition to Cargo, N.O.S. rates. A review of invoices and freight payments for shipments moving under Haewoo bills of lading from June 5, 1994, to January 19, 1995, indicated that Haewoo did not charge the rates contained in its tariff. On February 3, 1995, additional commodity rates were filed by Haewoo in its tariff.

Section 10(b)(1) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1709(b)(1), provides that no common carrier may charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges in its tariffs. In regard to the activities of Haewoo, it appears that Haewoo charged less than its applicable tariff rates for the transportation of at least 36 shipments between June 5, 1994, and January 19, 1995, in violation of section 10(b)(1) of the 1984 Act.

Section 11 of the 1984 Act, 46 U.S.C. app. 1710, sets forth the Commission's authority to investigate violations of the 1984 Act. In the event violations are found, section 13 of the 1984 Act, 46 U.S.C. app. 1712, provides that the Commission may assess civil penalties and suspend tariffs as remedies for violations of section 10(b)(1). Section 14(a) of the 1984 Act, 46 U.S.C. app. 1713(a), empowers the Commission to issue orders relating to violations of the 1984 Act.

Now therefore it is ordered, that pursuant to sections 10, 11, 13 and 14 of the 1984 Act, an investigation is hereby instituted to determine:

1. Whether Haewoo violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting, or receiving greater, lesser, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs;

2. Whether, in the event Haewoo violated the 1984 Act, civil penalties should be assessed against Haewoo and, if so, the amount of such penalties;

3. Whether, in the event violations are found, an appropriate cease and desist order should be issued; and

4. Whether, in the event violations are found, Haewoo's tariff should be suspended for a period of time not to exceed 12 months.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge (''Presiding Officer'') of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The Hearing shall include oral testimony and cross-examination at the discretion of the Presiding Officer only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute

resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That Haewoo Air & Shipping Co., Ltd. d/b/a Haewoo Shipping Co., Ltd. is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, and comply with Subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by January 20, 1997, and the final decision of the Commission shall be issued by May 20, 1997.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–13056 Filed 5–22–96; 8:45 am]

BILLING CODE 6730–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, May 30, 1996, from 9 a.m. to 4 p.m. in room 7C13 of the General Accounting Office, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss and review the (1) *Accounting for Natural Resources* document, (2) JFMIP Cost Accounting Systems and Reporting project, (3) *Invitation for Views: Accounting for the cost of Capital* document, and (4) Rule 203 of the AICPA's Code of Ethics.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., Room 1001, Washington, DC. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 20, 1996.

[FR Doc. 96–13040 Filed 5–22–96; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA 317]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health and Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sampling Plan; *Form No.:* HCFA–317; *Use:* The State MEQC sampling plan is necessary for HCFA to monitor the States' operation of the MEQC system. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claims collection procedures; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 55; *Total Annual Responses:* 110; *Total Annual Hours:* 2,640.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–12962 Filed 5–22–96; 8:45 am]

BILLING CODE 4120–03–P

Agency for Toxic Substances and Disease Registry

[ATSDR–110]

Minimal Risk Levels for Priority Substances and Guidance for Derivation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604 et seq.), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), requires that

ATSDR develop jointly with the U.S. Environmental Protection Agency (EPA), in order of priority, a list of hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) (42 U.S.C. 9604(i)(2)); prepare toxicological profiles for each substance included on the priority list of hazardous substances, and to ascertain in the toxicological profiles, significant human exposure levels (SHELs) for hazardous substances in the environment, and the associated acute, subacute, and chronic health effects (42 U.S.C. 9604(i)(3)); and assure the initiation of a research program to fill identified data needs associated with the substances (42 U.S.C. 9604(i)(5)). The ATSDR Minimal Risk Levels (MRLs) were developed in response to the mandate for SHELs and to provide screening levels for health assessors and other responders to identify contaminants and potential health effects that may be of concern at hazardous waste sites and releases.

This notice announces the internal guidance for derivation of MRLs for priority hazardous substances by ATSDR. The guidance represents the agency's current approach to deriving MRLs and reflects the most current scientific assessment. Comments from the public on the process of deriving MRLs are welcome. The MRLs for a particular substance are published in the toxicological profile for that substance. A listing of the current published MRLs is provided at the end of the notice.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–110 and should be submitted to: Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. Selene Chou, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404)639–6308 or FAX (404)639–6315.

SUPPLEMENTARY INFORMATION: CERCLA requires that ATSDR prepare toxicological profiles for priority hazardous substances, and to ascertain significant human exposure levels for these substances in the environment, and the associated acute, subacute, and chronic health effects (42 U.S.C. 9604(i)(3)). Minimal Risk Levels (MRLs) were developed as an initial response to the mandate. Following discussions with scientists within the HHS and the EPA, ATSDR chose to adopt a practice similar to that of the EPA's Reference Dose (RfD) and Reference Concentration (RfC) for deriving substance-specific levels. An MRL is an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure. These substance- specific estimates, which are intended to serve as screening levels, are used by ATSDR health assessors and other responders to identify contaminants and potential health effects that may be of concern at hazardous waste sites and releases. It is important to note that MRLs are not intended to define clean-up or action levels for ATSDR or other Agencies.

The toxicological profiles include an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations of a hazardous substance. During the development of toxicological profiles, MRLs are derived when ATSDR determines that reliable and sufficient data exist to identify the target organ(s) of effect, or the most sensitive health effect(s) for a specific exposure duration for a given route of exposure to the substance. MRLs are based on noncancer health effects only and are not based on a consideration of cancer effects. Inhalation MRLs are exposure concentrations expressed in units of parts per million (ppm) for gases and volatiles, or milligrams per cubic meter (mg/m3) for particles. Oral MRLs are expressed as daily human doses in units of milligrams per kilogram per day (mg/kg/day).

ATSDR uses the no-observed-adverse-effect-level/uncertainty factor approach to derive MRLs for hazardous substances. The MRLs are set below levels that, based on current information, might cause adverse health effects in the people most sensitive to such substance-induced effects (Barnes and Dourson 1988; EPA 1990). MRLs are derived for acute (1–14 days), intermediate (15–364 days), and chronic (365 days and longer) exposure durations and for the oral and inhalation routes of exposure. Currently, MRLs for the dermal route of exposure are not derived because ATSDR has not yet identified a method suitable for this route of exposure. MRLs are generally based on the most sensitive substance-induced end point considered to be of relevance to humans. ATSDR does not use serious health effects (such as irreparable damage to the liver or kidneys, or birth defects) as a basis for establishing MRLs. Exposure to a level above the MRL does not mean that adverse health effects will occur.

MRLs are intended to serve as a screening tool to help public health professionals decide where to look more closely. They may also be viewed as a mechanism to identify those hazardous waste sites or other hazardous substance exposures that are not expected to cause adverse health effects. Most MRLs contain some degree of uncertainty because of the lack of precise toxicological information on the people who might be most sensitive (e.g., infants, elderly, and nutritionally or immunologically compromised) to the effects of hazardous substances. ATSDR uses a conservative (i.e., protective) approach to address these uncertainties, consistent with the public health principle of prevention. Although human data are preferred, MRLs often must be based on results of animal studies because relevant human studies are lacking. In the absence of evidence to the contrary, ATSDR assumes that humans are more sensitive than animals to the effects of hazardous substances, and that certain persons may be particularly sensitive. Thus, the resulting MRL may be as much as a hundredfold below levels shown to be nontoxic in laboratory animals.

Proposed MRLs undergo a rigorous review process. They are reviewed by the Health Effects/MRL Workgroup within the Division of Toxicology; an expert panel of peer reviewers; the agency wide MRL Workgroup, with participation from other federal agencies, including EPA; and are submitted for public comment through the toxicological profile public comment period. Each MRL is subject to change as new information becomes available concomitant with updating the toxicological profile of the substance. MRLs in the most recent toxicological profiles supersede previously published levels. A listing of the current published MRLs is provided at the end of this notice.

Categories Used to Derive MRLs

The following health effect end points can be used to derive MRLs:

Systemic
- Respiratory
- Cardiovascular
- Gastrointestinal
- Hematological
- Musculoskeletal
- Hepatic
- Renal
- Endocrine
- Dermal
- Ocular
- Metabolic
- Body weight change
- Other systemic effects
- Immunological and Lymphoreticular
- Neurological
- Reproductive

Developmental

To provide a better analysis of the toxic potential of the profiled substance, the same effect can be considered under more than one system category; for example, behavioral effects in the offspring can be either neurological or developmental. However, only one system category per exposure route and duration should be chosen as the basis for deriving the MRL. If two different effects within two different systems would result in the same MRL value, the MRL should be derived from the one that is best supported by data from all exposure routes and durations.

Classification of End Points as NOAELs, Less Serious LOAELs or Serious LOAELs

MRLs are derived from no-observed-adverse-effect levels (NOAELs). In the absence of NOAELs, MRLs can be derived from less serious lowest-observed-adverse-effect levels (LOAELs). MRLs are not derived from serious LOAELs. In its 1986–1988 Biennial Report Volume II, ATSDR defines an adverse health effect as a harmful or potentially harmful change in the physiologic function, psychologic state, or organ structure that may result in an observed deleterious health outcome. Adverse health effects may be manifested in pathophysiologic changes in target organs, psychologic effects, or overt disease. This definition is interpreted to indicate that any effect that enhances the susceptibility of an organism to the deleterious effects of other chemical, physical, microbiological, or environmental influences should be considered adverse.

ATSDR acknowledges that a considerable amount of judgement is required in this process and that, in some cases, there will be insufficient data to decide whether or not an effect will lead to significant dysfunction. ATSDR generally will not derive an MRL if no adverse health effect has been reported in the published peer reviewed literature in any target organ (e.g., all free standing NOAELs) for a given duration. However, data from other durations and routes of exposure may lend support for selecting an appropriate end point to derive an MRL.

Deciding whether an end point is a NOAEL or a LOAEL depends in part upon the toxicity that occurs at other doses in the studies evaluated, and in part upon knowledge regarding the mechanism of toxicity of the substance. The distinction between less serious and serious LOAEL is intended to help the users of the toxicological profiles see at what levels of exposure ''major'' effects begin to appear, and whether the less serious effects occur at approximately the same levels as serious effects or at substantially lower levels of exposure. In general, a dose that evokes failure in a biological system and can lead to morbidity or mortality (e.g., acute respiratory distress or death) is referred to as a serious LOAEL. A more specific classification scheme is as follows.

No Adverse Effects

- Weight loss or decrease in body weight gain of less than 10%.
- Changes in organ weight of nontarget organ tissues not associated with abnormal morphologic or biochemical changes.
- Increased mortality over controls that is not statistically significant ($p > 0.05$).
- Some adaptive responses.

Less Serious Adverse Effects

- Reversible cellular alterations at the ultrastructural level (e.g., dilated endoplasmic reticulum) and at the light-microscopy level (e.g., cloudy swelling, fatty change).
- Necrosis (dependent upon location, distribution, reversibility or the degree of associated dysfunction), metaplasia, or atrophy with no apparent decrement of organ function.
- Serum chemistry changes, e.g., moderate elevations of serum aspartate aminotransferase (SGOT), serum alanine aminotransferase (SGPT).
- Weight loss or decrease in body weight gain of 10%–19%.
- Some adaptive responses.

Serious Effects

- Death
- Clinical effects of significant organ impairment (e.g., convulsions, icterus, cyanosis).
- Morphologic changes in organ tissues that potentially could result in severe dysfunction (e.g., marked necrosis of hepatocytes or renal tubules).
- Weight loss or decrease in body weight gain of 20% or greater.
- Serum chemistry changes (e.g., major elevations of SGOT, SGPT)
- Major metabolic effects (e.g., ketosis, acidosis, alkalosis).
- Cancer effects.

Additional guidance on the assessment of end-point-specific health effects is available upon request.

The Adequacy of Database for Derivation of an MRL

It is difficult to provide strict rules governing this determination. Each profiled substance presents its own unique situation. The following key points should be considered:

- Good quality human data are generally preferred over animal data.
- Only one MRL is derived per exposure period (acute, intermediate, or chronic) for each route of exposure.
- The MRL is generally based on the highest NOAEL (that does not exceed a LOAEL) or the lowest LOAEL for the most sensitive end point for that route and exposure period.
- Although not a preferred end point for MRL derivation, decreased body weight gain can be used when the decrease is greater than 10% and when the study provides some indication that weight loss is due to a systemic effect of toxicant and not reduced food and/or water intake.
- It is preferable to derive MRLs using data for each exposure duration. However, when this is not possible because of limitations of the database for a given duration, an MRL derived for one duration may sometimes be applicable to MRL(s) for other duration(s) of the same route based on consideration of the overall database.

Selection of Most Sensitive Effect

- The MRLs are based on the concept that a threshold level of exposure exists below which no noncancer health effect is likely to occur, and, therefore, an exposure level protective against the most sensitive effect would also be protective against all other effects. The most sensitive effect is the first adverse effect that occurs or is expected to occur in humans as dose increases. However, information on the mechanisms of action should be considered when assessing the significance of the effects. Where the target organ of effect is not clearly identified, an MRL is usually not derived. However, the lack of quantitative data for a particular system category does not preclude derivation of an MRL if other evidence, such as information from human case studies, toxicokinetics, and other exposure routes, indicates that this system would not be expected to be most sensitive to the substance for the exposure route and duration of concern.

Toxicokinetics data enter into consideration when comparing information across species, routes, and durations for determination of the most sensitive effect. Comparison of the metabolism of the compound exhibiting the toxic effect in animals with its metabolism in humans may affect the choice of the most sensitive end point. Toxicokinetic differences among species and for various chemical forms of the compound may help to explain an apparent inconsistency among studies.

Differences across routes of exposure can also be explained by different rates of absorption, metabolism (both detoxication and activation), and excretion.

Selection of a Representative, Quality Study for MRL Derivation

ATSDR emphasizes its preference for using data from humans whenever such data are reliable and appropriate for MRL derivation. However, human studies must be of sufficient duration and contain an adequate number of documented exposed individuals to be useful in risk assessment. In the absence of adequate human studies, animal studies are used. The author(s) of the study must provide enough information on the oral dose or inhalation exposure concentration administered to the treated animals to allow for estimation of an equivalent human oral dose or inhalation exposure. For both oral and inhalation studies, the data presented in the study should at least include the air, water, or food concentration, the duration of exposure, the frequency of exposure (i.e., per day and per week), the age of the animals, and evidence that the food and water consumption rates were not abnormal (e.g., from weight gain data) for an animal of similar age.

Background documents on general factors that ATSDR considers in evaluating the quality of a study are available upon request. Other general principles that have been accepted in practice when evaluating studies include:

- Considerations to the exposure scenario more likely to occur in environmental exposures. For example, drinking water or feeding studies are preferred over gavage oil studies for oral exposures.
- Determination whether the study data show a dose-response consistent with other studies.

The following effects are not used for MRL derivation:

- Increased incidence of mortality.
- Serious LOAELs.
- Health effects that occur in test species as a result of mechanisms, or metabolic processes that are not found in humans (e.g., α2μ-globulin nephropathy in male rats).
- Spontaneously occurring disorders that are species and gender related (e.g., chronic progressive nephropathy in male rats).
- Effects of unknown biological significance, based on mechanism of action, that do not affect known target organs.
- Cancer effects.

Computation of Inhalation MRLs

1. Extrapolating From Animals to Humans

When animal data is used in the absence of adequate quantitative human data, exposure concentrations should be converted to human equivalent concentrations by using dosimetry adjustment in accordance with EPA (1990), ''Interim Methods for Development of Inhalation Reference Doses'' (EPA/600/8–90/066A, August 1990). Standard reference values should be obtained from EPA (1988): ''Recommendations for and Documentation of Biological Values for Use in Risk Assessment'' (EPA 600–6–87/008, February, 1988).

For inhalation exposures to gases or vapors, it may be necessary to convert to human equivalent exposures for respiratory effects (e.g., using the regional gas dose ratio for the targeted region of the respiratory tract) or extra-respiratory effects (e.g., using the blood to air partition coefficient ratio).

For inhalation exposure to particles, it may also be necessary to convert to human equivalent exposures for respiratory effects (e.g., using the regional deposited dose ratio for the targeted region of the respiratory tract), or extrarespiratory effects (e.g., using the regional deposited dose ratio and uptake from the entire respiratory system).

2. Adjusting From Intermittent to Continuous Dosing

ATSDR defines an MRL as ''an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure''. The ideal study would involve continuous dosing over the course of the study. If a study did not involve continuous dosing over the entire exposure period, an adjustment is usually made. The ''intermittent exposure dose'' (either the NOAEL or LOAEL of the critical effect selected to be used for MRL derivation) is multiplied by correction factors to adjust for full day and week exposures. For example, in intermediate (longer than 14 days) or chronic (longer than 364 days) studies in which the experimental animals were dosed for 6 hours a day for 5 days a week, the estimated ''adjusted dose'' becomes:

Adjusted dose = Intermittent dose × (6 hours/24 hours) × (5 days/7 days)

Intermediate and chronic duration inhalation studies are usually dose-adjusted for day and week exposures; acute duration inhalation studies can be duration adjusted from intermittent exposures to 24 hours continuous exposure, but are not adjusted to 1 week. For example, acute studies in which animals were exposed for 6 hours/day for 3 days can be adjusted as follows:

Adjusted dose = Intermittent dose × (6 hours/24 hours)

However, making duration adjustments may not be appropriate in every instance. The toxicokinetics and mechanism of action should be examined to the fullest extent possible before a determination is made to adjust for intermittent exposures. The following are some factors to consider in adjusting for dose and duration.

- When the critical effects are mainly dependent on the exposure concentrations and the substance being tested is rapidly metabolized and/or excreted, dose adjustment is inappropriate.
- If the effects being examined are mainly duration dependent (e.g., longer periods of exposure increase the severity of the effects being studied) and metabolism/excretion is moderate to slow, or the study identifies a cumulative effect, duration adjustment may be appropriate.

3. Converting From Salt to Parent Substance

Salt concentrations or doses are converted to equivalent concentrations or doses of the parent substance by multiplying by the molecular weight ratio of parent to salt.

Computation of Oral MRLs

1. Converting From Concentration to Dose

For feeding studies, the equation for the conversion from food concentrations is:

(ppm in food) × (f/kg body weight) = mg/kg/day

The food consumption factor (f) is kg of food consumed per day. Unless the food consumption rate and body weights are available, standard reference values should be obtained from EPA (1988).

For drinking water studies, the equation for conversion from water concentrations is:

(ppm in water) × (C/kg body weight) = mg/kg/day

The water consumption rate (C) is liters of water consumed per day. Unless C and body weights are provided in the study, standard reference values should be obtained from EPA (1988) or EPA (1986), as appropriate.

2. Converting From Intermittent to Daily Dosing

By definition an MRL is ''an estimate of the daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse noncancer health effects over a specified duration of exposure''. If the principal study did not involve daily dosing over the entire exposure period, an adjustment is usually made. The ''intermittent dose'' is multiplied by the fraction of the study days over which the test animals were actively dosed. Acute oral studies are not adjusted to 1 week; intermediate and chronic oral studies are usually dose-adjusted to full week exposures. For example, for animals orally dosed weekly 5 days a week, the estimated ''continuous dose'' becomes:

adjusted dose = intermittent dose × (5 days/7 days)

Uncertainty factors and modifying factor

When sufficient human data are not available to allow an accurate assessment of noncancer health risks, ATSDR may extrapolate from available information using uncertainty factors (UFs) to account for different areas of uncertainty in the database to derive MRLs. In addition, a modifying factor (MF) may be applied to reflect additional scientific judgement on the database.

MRLs are derived from human equivalent no-observed-adverse-effect levels and are calculated as follows:

$$MRL = (NOAEL)_{HEC} / (UF \times MF)$$

When an appropriate NOAEL does not exist, the lowest LOAEL should be used and a UF is applied for the use of a LOAEL. Additional uncertainty factors for human variability to protect sensitive subpopulations, for interspecies extrapolation when animal studies are used for derivation of MRLs, and for extrapolation across exposure durations are also used.

The default value for each individual UF is 10; if complete certainty in data exists, a value of one can be used; and an intermediate value is three. By multiplying these individual uncertainty factors, a combined UF is obtained.

The use of UFs and MFs should be based on scientific judgement on a case-by-case basis. General guidelines are as follows:

Intrahuman variation

An UF of 10 is generally used to account for intrahuman variation. However, a UF of 3 or 1 may be applied when a large epidemiologic study or a study of the sensitive population was used.

Interspecies Extrapolation

In the absence of adequate human data, animal data are used; a UF of 10 is generally used to account for extrapolation from animals to humans. However, a UF of 3 or 1 may also be used when comparative toxicological data indicate that similar effects are expected in humans at comparable exposure levels. For inhalation MRLs, when dosimetry adjustment is made for converting animal exposure levels to human equivalent concentrations, a UF of 3 is generally applied to account for any remaining uncertainty (Jarabek and Segal 1994).

LOAEL to NOAEL Extrapolation

MRLs are derived from NOAELs. In the absence of a NOAEL, the lowest LOAEL that causes less serious adverse health effects is used, and a UF of 10 is generally applied. When the less serious LOAEL approaches the threshold level, that is, only minimal effects are observed representing an early indication of toxicity, the effect level is considered to be a minimal LOAEL, and a UF of 3 may be used.

Extrapolation Across Durations

It is preferable to derive MRLs using data for each exposure duration. However, when the database supports extrapolation across acute, intermediate, or chronic exposure durations, a UF may be applied based on scientific judgement. For example, the chronic inhalation MRL for chlordane was derived from the intermediate inhalation MRL with an additional UF of 10 to account for across duration extrapolation; the chronic inhalation MRL was supported by the limited data on chronic exposure as well as the data on oral exposure.

Modifying Factor (MF)

An MF greater than zero and up to 10 may be applied to reflect additional concerns about the database not covered by the UFs. The default value for MF is 1. An example is the use of an MF of 3 to account for the incomplete database in deriving the chronic oral MRL for 4,4′-methylenebis(2-chloroaniline). Another possible consideration is that if a test substance is known to bioaccumulate, some studies may overestimate the dose needed to cause effects. In such cases, a modifying factor may be applied.

EPA RfDs and ATSDR MRLs

The current approach for MRL derivation by ATSDR is similar to the methods used by EPA to derive Reference Doses (RfDs) and Reference Concentrations (RfCs) for chronic exposures. The following table shows the difference in methodology used by ATSDR and EPA in deriving MRLs and RfDs/RfCs respectively.

As with RfD methodology, in deriving MRLs, ATSDR uses UFs and MFs to account for extrapolation from animals to humans, from LOAEL to NOAEL, for intraspecies variation, for across duration extrapolation, and for professional judgement on the database. In addition, EPA uses a UF for an incomplete database (EPA 1990) whereas ATSDR incorporates scientific judgement, including an incomplete database in the MF. However, ATSDR does not extrapolate across route of exposure at this time. It is recognized that the EPA derives RfDs as part of its regulatory decision-making process. Extrapolation across route of exposure (most commonly using data from inhalation studies to estimate levels by the oral route) is sometimes used to develop an RfD where there is inadequate route-specific information.

Because MRLs may be based on more recent data and are derived using a slightly different methodology, or because MRLs are derived as a result of different scientific judgement, MRLs and RfDs (or RfCs) for the same substance are not necessarily of the same value.

	MRL	RfD/RfC
Exposure duration.	Acute	Chronic.
	Intermediate	
	Chronic	
Route of exposure.	Oral	Oral.
	Inhalation	Inhalation.
UFs used:		
Human variability.	Yes	Yes.
Interspecies extrapolation.	Yes	Yes.
LOAEL to NOAEL.	Yes	Yes.
Extrapolation across duration.	Yes	Yes.
Incomplete database.	No	Yes.
Across route extrapolation.	No	Yes.
MF	Yes	Yes.

MRLs for Essential Trace Elements

Since many nutritionally essential elements have been found to be

common contaminants at some toxic waste sites, consideration was given to both essentiality and toxicity when deriving MRLs for these substances. Special reference was given to background levels and levels that have been published as Recommended Dietary Allowances (RDA) or Estimated Safe and Adequate Daily Dietary Intakes (ESADDIs) by the Food and Nutrition Board of the National Research Council. MRLs should not be in conflict with the corresponding RDAs and should be protective for all age groups.

MRLs vs. Ambient Levels

Since MRLs serve as screening tools for health assessors, it is important to compare MRLs with ambient levels reported in environmental monitoring studies. When MRLs are lower than ambient levels, the relevance of the MRLs is in question, and special consideration is warranted.

Future Approaches

ATSDR is considering the application of physiologically based pharmacokinetic (PBPK) modeling to enhance understanding of dose and across-route extrapolations. In addition, ATSDR is evaluating the utility of Benchmark Dose modelling, to obtain low-incidence response exposure levels calculated from mathematically fitted dose-response curves, as an adjunct to the current NOAEL/LOAEL approach in deriving MRLs.

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ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
ACENAPHTHENE	000083–32–9	ORAL	INTERMEDIATE	0.6 mg/kg/day	300	Hepatic.
ACETONE	000067–64–1	INHALATION	ACUTE	26 ppm	9	Neurological.
		INHALATION	INTERMEDIATE	13 ppm	100	Neurological.
		INHALATION	CHRONIC	13 ppm	100	Neurological.
		ORAL	INTERMEDIATE	2 mg/kg/day	100	Hematological.
ACROLEIN	000107–02–8	INHALATION	ACUTE	0.00005 ppm	100	Ocular.
		INHALATION	INTERMEDIATE	0.000009 ppm	1000	Respiratory.
		ORAL	CHRONIC	0.0005 mg/kg/day	100	Hematological.
ACRYLONITRILE	000107–13–1	INHALATION	ACUTE	0.1 ppm	10	Neurological.
		ORAL	ACUTE	0.1 mg/kg/day	100	Developmental.
		ORAL	INTERMEDIATE	0.01 mg/kg/day	1000	Reproductive.
		ORAL	CHRONIC	0.04 mg/kg/day	100	Hematological.
ALDRIN	000309–00–2	ORAL	ACUTE	0.002 mg/kg/day	1000	Developmental.
		ORAL	CHRONIC	0.00003 mg/kg/day	1000	Hepatic.
AMMONIA	007664–41–7	INHALATION	ACUTE	0.5 ppm	100	Respiratory.
		INHALATION	CHRONIC	0.3 ppm	10	Respiratory.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	100	Other.
ANTHRACENE	000120–12–7	ORAL	INTERMEDIATE	10 mg/kg/day	100	Hepatic.
ARSENIC	007440–38–2	ORAL	CHRONIC	0.003 mg/kg/day	3	Dermal.
BENZENE	000071–43–2	INHALATION	ACUTE	0.05 ppm	300	Immunological.
BIS (2-CHLORO-ETHYL) ETHER.	000111–44–4	INHALATION	INTERMEDIATE	0.02 ppm	1000	Body Weight.
BIS (CHLORO-ETHYL) ETHER.	000542–88–1	INHALATION	INTERMEDIATE	0.0003 ppm	100	Respiratory.
BORON	007440–42–8	ORAL	INTERMEDIATE	0.01 mg/kg/day	1000	Developmental.
BROMODICHLOROME-THANE.	000075–27–4	ORAL	ACUTE	0.04 mg/kg/day	1000	Hepatic.
		ORAL	CHRONIC	0.02 mg/kg/day	1000	Renal/Urinary
BROMOFORM	000075–25–2	ORAL	ACUTE	0.6 mg/kg/day	100	Nurological.
		ORAL	CHRONIC	0.2 mg/kg/day	100	Hepatic.
BROMOMETHANE	000074–83–9	INHALATION	ACUTE	0.05 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Neurological.
		INHALATION	CHRONIC	0.005 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	100	Gastrointestinal.
CADMIUM	007440–43–9	INHALATION	CHRONIC	0.0002 mg/m^3	10	Renal/Urinary.
		ORAL	CHRONIC	0.007 mg/kg/day	3	Renal/Urinary.
CARBON DISULFIDE	000075–15–0	INHALATION	CHRONIC	0.3 ppm	30	Neurolgical.
		ORAL	ACUTE	0.01 mg/kg/day	300	Hepatic.
CARBON TETRA-CHLORIDE.	000056–23–5	INHALATION	ACUTE	0.2 ppm	300	Hepatic.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Hepatic.
		ORAL	ACUTE	0.02 mg/kg/day	300	Hepatic.
		ORAL	INTERMEDIATE	0.007 mg/kg/day	100	Hepatic.
CHLORDANE	000057–74–9	INHALATION	INTERMEDIATE	0.0002 mg/m^3	100	Hepatic.
		INHALATION	CHRONIC	0.00002 mg/m^3	1000	Hepatic.
		ORAL	ACUTE	0.001 mg/kg/day	1000	Developmental.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
		ORAL	INTERMEDIATE	0.0006 mg/kg/day	100	Hepatic.
		ORAL	CHRONIC	0.000 mg/kg/day	100	Hepatic.
CHLORFENVINPHOS	000470–90–6	ORAL	ACUTE	0.002 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	1000	Lymphoreticular.
		ORAL	CHRONIC	0.002 mg/kg/day	1000	Neurological.
CHLOROBENZENE	000108–90–7	ORAL	INTERMEDIATE	0.4 mg/kg/day	100	Hepatic.
CHLORODIBROMOMETHANE.	000124–48–1	ORAL	ACUTE	0.04 mg/kg/day	1000	Renal/Urinary.
		ORAL	CHRONIC	0.03 mg/kg/day	1000	Hepatic.
CHLOROETHANE	000075–00–3	INHALATION	ACUTE	1300 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	76 ppm	100	Body Weight.
CHLOROFORM	000067–66–3	INHALATION	ACUTE	1 ppm	30	Hepatic.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Hepatic.
		INHALATION	CHRONIC	0.02 ppm	100	Hepatic
		ORAL	ACUTE	0.3 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.1 mg/kg/day	100	Hepatic.
		ORAL	CHRONIC	0.01 mg/kg/day	1000	Hepatic.
CHLOROMETHANE	000074–87–3	INHALATION	ACUTE	0.5 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.4 ppm	100	Body Weight.
		INHALATION	CHRONIC	0.4 ppm	100	Body Weight.
CHLORPYRIFOS	002921–88–2	ORAL	ACUTE	0.003 mg/kg/day	10	Neurological.
		INHALATION	CHRONIC	0.00002 mg/m^3	10	Respiratory.
CHROMIUM, HEXAVALENT.	018540–29–9	INHALATION	INTERMEDIATE	0.00002 mg/m^3	10	Respiratory.
		INHALATION	CHRONIC	0.00002 mg/m^3	10	Respiratory.
COBALT	007440–48–4	INHALATION	INTERMEDIATE	0.00003 mg/m^3	1000	Respiratory.
CRESOL, META-	000108–39–4	ORAL	ACUTE	0.05 mg/kb/day	100	Respiratory.
CRESOL, ORTHO-	000095–48–7	ORAL	ACUTE	0.05 mg/kg/day	100	Neurological.
CRESOL, PARA-	000106–44–5	ORAL	ACUTE	0.05 mg/kg/day	100	Neurological.
CYANIDE	000057–12–5	ORAL	INTERMEDIATE	0.05 gm/kg/day	100	Reproductive.
CYCLOTETRAMETHYLENE TETRANITRAMINE.	002691–41–0	ORAL	ACUTE	0.1 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.05 mg/kg/day	1000	Hepatic.
CYCLOTRIMETHYLENETRINITRAMINE (RDX).	000121–82–4	ORAL	ACUTE	0.06 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.03 mg/kg/day	300	Reproductive.
DDT, P,P′-	000050–29–3	ORAL	ACUTE	0.0005 mg/kg/day	1000	Developmental.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	100	Hepatic.
DI(2-ETHYLHEXYL) PHTHALATE.	000117–81–7	ORAL	ACUTE	1 mg/kg/day	100	Reproductive.
		ORAL	INTERMEDIATE	0.4 mg/kg/day	100	Developmental.
DI-N-BUTYL PHTHALATE.	000084–74–2	ORAL	INTERMEDIATE	0.6 mg/kg/day	100	Developmental .
DI-N-OCTYL PHTHALATE.	000117–84–0	ORAL	ACUTE	2 mg/kg/day	1000	Hepatic.
DIAZINON	000333–41–5	ORAL	INTERMEDIATE	0.0002 mg/kg/day	1000	Developmental.
DICHLORVOS	000062–73–7	INHALATION	ACUTE	0.002 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.0003 ppm	100	Neurological.
		INHALATION	CHRONIC	0.00006 ppm	100	Neurological.
		ORAL	ACUTE	0.004 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	10	Neurological.
DIELDRIN	000060–57–1	ORAL	ACUTE	0.00007 mg/kg/day	1000	Immunological.
		ORAL	CHRONIC	0.00005 mg/kg/day	100	Hepatic.
DIETHYL PHTHALATE	000084–66–2	ORAL	ACUTE	7 mg/kg/day	300	Reproductive.
		ORAL	INTERMEDIATE	6 mg/kg/day	300	Hepatic.
DISULFOTON	000298–04–4	INHALATION	ACUTE	0.006 mg/m^3	30	Neurological.
		INHALATION	INTERMEDIATE	2E–4 mg/m^3	30	Neurological.
		ORAL	ACUTE	0.001 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	9E–5 mg/kg/day	100	Developmental.
		ORAL	CHRONIC	6E–5 mg/kg/day	1000	Neurological.
ENDOSULFAN	000115–29–7	ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Immunological.
		ORAL	CHRONIC	0.002 mg/kg/day	100	Hepatic.
ENDRIN	000072–20–8	ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Neurological.
		ORAL	CHRONIC	0.0003 mg/kg/day	100	Neurological.
EHTYL BENZENE	000100–41–4	INHALATION	INTERMEDIATE	0.3 ppm	100	Developmental.
ETHYLENE GLYCOL	000107–21–1	ORAL	CHRONIC	2 mg/kg/day	100	Renal/Urinary.
ETHYLENE OXIDE	000075–21–8	INHALATION	INTERMEDIATE	0.09 ppm	100	Renal/Urinary.
FLUORANTHENE	000206–44–0	ORAL	INTERMEDIATE	0.4 mg/kg/day	300	Hepatic.
FLUORENE	000086–73–7	ORAL	INTERMEDIATE	0.4 mg/kg/day	300	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
FUEL OIL NO. 2	068476–30–2	INHALATION	ACUTE	0.02 mg/m^3	1000	Neurological.
HEXACHLOROBENZENE.	000118–74–1	ORAL	ACUTE	0.008 mg/kg/day	300	Developmental.
		ORAL	INTERMEDIATE	0.0003 mg/kg/day	300	Reproductive.
		ORAL	CHRONIC	0.00002 mg/kg/day	1000	Developmental.
HEXACHLOROBUTADIENE.	000087–68–3	ORAL	INTERMEDIATE	0.0002 mg/kg/day	1000	Renal/Urinary.
HEXACHLOROCYCLOHEXANE, BETA-.	000319–85–7	ORAL	INTERMEDIATE	0.0003 mg/kg/day	300	Hepatic.
HEXACHLOROCYCLOHEXANE, GAMMA-.	000058–89–9	ORAL	ACUTE	0.01 mg/kg/day	300	Neurological.
		ORAL	INTERMEDIATE	0.00004 mg/kg/day	300	Immunological.
HEXACHLOROETHANE	000067–72–1	INHALATION	ACUTE	0.5 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.09 ppm	100	Respiratory.
		ORAL	ACUTE	0.1 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.01 mg/kg/day	100	Hepatic.
HYDRAZINE	000302–01–2	INHALATION	INTERMEDIATE	0.0002 ppm	1000	Hepatic.
ISOPHORONE	000078–59–1	ORAL	INTERMEDIATE	3 mg/kg/day	100	Other.
		ORAL	CHRONIC	0.2 mg/kg/day	1000	Hepatic.
JP–4 JET FUEL	050815–00–4	INHALATION	INTERMEDIATE	9 mg/m^3	300	Hepatic.
JP–7 JET FUEL	HZ0600–22–T	INHALATION	CHRONIC	0.3 mg/m^3	300	Hepatic.
KEPONE	000143–50–0	ORAL	ACUTE	0.01 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	100	Renal/Urinary.
		ORAL	CHRONIC	0.0005 mg/kg/day	100	Renal/Urinary.
KEROSENE	008008–20–6	INHALATION	INTERMEDIATE	0.01 mg/m^3	1000	Hepatic.
M–XYLENE	000108–38–3	ORAL	INTERMEDIATE	0.6 mg/kg/day	1000	Hepatic.
MANGANESE	007439–96–5	INHALATION	CHRONIC	0.0003 mg/m^3	100	Neurological.
MERCURY, INORGANIC	HZ0900–19–T	ORAL	ACUTE	0.007 mg/kg/day	100	Renal/Urinary.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Renal/Urinary.
MERCURY, METALLIC	007439–97–6	INHALATION	ACUTE	0.00002 mg/m^3	100	Developmental.
		INHALATION	CHRONIC	0.000014 mg/m^3	100	Neurological.
METHOXYCHLOR	000072–43–5	ORAL	ACUTE	0.02 mg/kg/day	1000	Reproductive.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	1000	Reproductive.
METHYL PARATHION	000298–00–0	ORAL	CHRONIC	0.0003 mg/kg/day	100	Neurological.
METHYL-T-BUTYL ETHER.	001634–04–4	INHALATION	ACUTE	2 ppm	100	Neuorlogical.
		INHALATION	INTERMEDIATE	0.7 ppm	100	Neurological.
		INHALATION	CHRONIC	0.7 ppm	100	Renal/Urinary.
		ORAL	ACUTE	0.4 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	300	Hepatic.
METHYLENE CHLORIDE.	000075–09–2	INHALATION	ACUTE	0.4 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.03 ppm	1000	Hepatic.
		ORAL	CHRONIC	0.06 mg/kg/day	100	Hepatic.
METHYLMERCURIC CHLORIDE.	000115–09–3	ORAL	ACUTE	0.00012 mg/kg/day	10	Developmental.
		ORAL	INTERMEDIATE	0.00012 mg/kg/day	10	Developmental.
MIREX	002385–85–5	ORAL	CHRONIC	0.0008 mg/kg/day	100	Hepatic.
N-NITROSODI-N-PROPYLAMINE.	000621–64–7	ORAL	ACUTE	0.095 mg/kg/day	100	Hepatic.
NAPHTHALENE	000091–20–3	INHALATION	CHRONIC	0.002 ppm	1000	Neurological.
		ORAL	ACUTE	0.05 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	300	Hepatic.
NICKEL	007440–02–0	INHALATION	INTERMEDIATE	0.00004 mg/m^3	100	Respiratory
P-XYLENE	000106–64–3	ORAL	ACUTE	1 mg/kg/day	100	Neurological.
PENTACHLOROPHENOL.	000087–86–5	ORAL	ACUTE	0.005 mg/kg/day	1000	Developmental.
		ORAL	INTERMEDIATE	0.001 mg/kg/day	1000	Hepatic.
PHENOL	000108–95–2	ORAL	ACUTE	0.6 mg/kg/day	100	Developmental.
POLYBROMINATED BIPHENYLS.	067774–32–7	ORAL	ACUTE	0.01 mg/kg/day	100	Endocrine.
POLYCHLORINATED BIPHENYLS.	001336–36–3	ORAL	CHRONIC	0.00002 mg/kg/day	300	Immunological.
PROPYLENE GLYCOL DINITRATE.	006423–43–4	INHALATION	ACUTE	0.003 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	0.00004 ppm	1000	Hematological.
		INHALATION	CHRONIC	0.00004 ppm	1000	Hematological.
SELENIUM	007782–49–2	ORAL	CHRONIC	0.002 mg/kg/day	10	Dermal.
SODIUM FLUORIDE	007681–49–4	ORAL	CHRONIC	0.05 mg/kg/day	10	Musculoskeletal.
STYRENE	000100–42–5	INHALATION	CHRONIC	0.06 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	1000	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

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Substance name	CAS No.	Route	Duration	Value	Factors	End point
TETRACHLOROETHYLENE TETRACHLOROETHYLENE.	000127–18–4	INHALATION	ACUTE	0.2 ppm	10	Neurological.
		INHALATION	CHRONIC	0.04 PPM	100	Neurological.
		ORAL	ACUTE	0.5 mg/kg/day	1000	Development.
TITANIUM TETRACHLORIDE.	007550–45–0	INHALATION	CHRONIC	0.001 mg/m^3	90	Respiratory.
TOLUENE	0001108–88–3	INHALATION	ACUTE	3 ppm	30	Neurological.
		INHALATION	CHRONIC	1 ppm	30	Neurological.
		ORAL	ACUTE	0.8 mg/kg/day	300	Neurological.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	300	Neurological.
TOTAL XYLENES	001330–20–7	INHALATION	ACUTE	1 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.7 ppm	300	Development.
		INHALATION	CHRONIC	0.1 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	1000	Renal/Urinary.
TOXAPHENE	008001–35–2	ORAL	ACUTE	0.005 mg/kg/day	1000	Hepatic.
		ORAL	INTERMEDIATE	0.001 mg/kg/day	100	Hepatic.
TRICHLOROETHYLENE	000079–01–6	INHALATION	ACUTE	2 ppm	30	Neurological.
		INHALATION	INTERMEDIATE	0.1 ppm	300	Neurological.
		ORAL	ACUTE	0.5 mg/kg/day	100	Development.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Development.
VANADIUM	007440–62–2	INHALATION	ACUTE	0.0002 mg/m^3	100	Respiratory.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	100	Renal/Urinary.
VINYL ACETATE	000108–05–4	INHALATION	INTERMEDIATE	0.01 ppm	100	Respiratory.
VINYL, CHLORIDE	000075–01–4	INHALATION	ACUTE	0.5ppm	100	Development.
		INHALATION	INTERMEDIATE	0.03 ppm	300	Hepatic.
		ORAL	CHRONIC	0.00002 mg/kg/day	1000	Hepatic.
ZINC	007440–66–6	ORAL	INTERMEDIATE	0.3 mg/kg/day	3	Hematological.
		ORAL	CHRONIC	0.3 mg/kg/day	3	Hematological.
1,1,1-TRICHLOROETHANE.	000071–55–6	INHALATION	ACUTE	2 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.7 ppm	100	Neurological.
1,1,2,2-TETRACHLORO-ETHANE.	000079–34–5	INHALATION	ACUTE	1 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	0.4 ppm	300	Hepatic.
		ORAL	ACUTE	0.3 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	300	Body Weight.
		ORAL	CHRONIC	0.3 mg/kg/day	300	Body Weight.
1,1,2-TRI-CHLORO-ETHANE.	000079–00–5	ORAL	ACUTE	0.3 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Hepatic.
1,1-DI-CHLORO-ETHENE.	000075–35–4	INHALATION	INTERMEDIATE	0.02 ppm	100	Hepatic.
		ORAL	CHRONIC	0.009 mg/kg/day	1000	Hepatic.
1,1-DI-METHYL-HYDRAZINE.	000057–14–7	INHALATION	INTERMEDIATE	0.000009 ppm	1000	Hepatic.
		INHALATION	CHRONIC	0.000009 ppm	1000	Hepatic.
1,2,3-TRI-CHLORO-PROPANE.	000096–18–4	INHALATION	ACUTE	0.0003 ppm	100	Respiratory.
		ORAL	INTERMEDIATE	0.06 mg/kg/day	100	Hepatic.
1,2-DI-BROMO-3-CHLORO-PRO-PANE.	000096–12–8	INHALATION	INTERMEDIATE	0.0002 ppm	100	Reproductive.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	1000	Reproductive.
1,2-DI-CHLORO-ETHANE.	000107–06–2	INHALATION	ACUTE	0.2 ppm	100	Immunological.
		INHALATION	CHRONIC	0.2 ppm	300	Hepatic.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	300	Renal/Urinary.
1,2-DI-CHLORO-ETHENE, CIS-.	000156–59–2	ORAL	ACUTE	1 mg/kg/day	100	Hematological.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	100	Hematological.
1,2-DI-CHLORO-ETHENE, TRANS-.	000156–60–5	INHALATION	ACUTE	0.2 ppm	1000	Hepatic.
		INHALATION	INTERMEDIATE	0.2 ppm	1000	Hepatic.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	100	Hepatic.
1,2-DI-CHLORO-PROPANE.	000078–87–5	INHALATION	ACUTE	0.05 ppm	1000	Respiratory.
		INHALATION	INTERMEDIATE	0.007 ppm	1000	Respiratory.
		ORAL	ACUTE	0.1 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.07 mg/kg/day	1000	Hematological.
		ORAL	CHRONIC	0.09 mg/kg/day	1000	Hepatic.
1,2-DI-METHYL-HYDRAZINE.	000540–73–8	ORAL	INTERMEDIATE	0.0008 mg/kg/day	1000	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
1,3-DI-CHLORO-PROPENE.	000542–75–6	INHALATION	INTERMEDIATE	0.003 ppm	100	Respiratory.
		INHALATION	CHRONIC	0.002 ppm	100	Respiratory.
1,3-DI-NITRO-BENZENE	000099–65–0	ORAL	ACUTE	0.008 mg/kg/day	100	Reproductive.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	1000	Hematological.
1,4-DI-CHLORO-BEN-ZENE.	000106–46–7	INHALATION	INTERMEDIATE	0.2 ppm	100	Hepatic.
		ORAL	INTERMEDIATE	0.1 mg/kg/day	100	Hepatic.
1-METHYLNAPHTHA-LENE.	000090–12–0	ORAL	CHRONIC	0.07 mg/kg/day	1000	Respiratory.
2,3,4,7,8-PENTA-CHLORO-DI-BENZO-FURAN.	057117–31–4	ORAL	ACUTE	0.000001 mg/kg/day	3000	Immunological.
		ORAL	INTERMEDIATE	0.00000003 mg/kg/day.	3000	Hepatic.
2,3,7,8-TETR-ACHLORO-DIBENZO-P-DIOXIN.	001746–01–6	ORAL	ACUTE	0.0000001 mg/kg/day	1000	Hepatic.
		ORAL	INTERMEDIATE	0.000000001 mg/kg/day.	1000	Reproductive.
		ORAL	CHRONIC	0.000000001 mg/kg/day.	1000	Reproductive.
2,4,6-TRI-CHLORO-PHENOL.	000088–06–2	ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Reproductive.
2,4,6-TRI-NITROTOL-UENE.	000118–96–7	ORAL	INTERMEDIATE	0.0005 mg/kg/day	1000	Hepatic.
2,4-DI-NITRO-PHENOL	000051–28–5	ORAL	ACUTE	0.01 mg/kg/day	100	Body Weight.
2,4-DI-NITRO-TOLUENE	000121–14–2	ORAL	ACUTE	0.06 mg/kg/day	1000	Hematological.
		ORAL	INTERMEDIATE	0.05 mg/kg/day	100	Reproductive.
		ORAL	CHRONIC	0.002 mg/kg/day	100	Hematological.
2,6-DI-NITRO-TOLUENE	000606–20–2	ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Neurological.
4,4°-METHYL-ENE-BIS (2-CHLOROANILINE).	000101–14–4	ORAL	CHRONIC	0.003 mg/kg/day	3000	Hepatic.
4,6-DI-NITRO-O-CRE-SOL.	000534–52–1	ORAL	ACUTE	0.004 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.004 mg/kg/day	100	Neurological.

[FR Doc. 96–12991 Filed 5–22–96; 8:45 am]

BILLING CODE 4163–70–P

Food and Drug Administration

Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). This subcommittee has been established to address issues related to science and research in FDA. The subcommittee's preliminary recommendations will be presented to the FDA Science Board for full public discussion at a future Science Board meeting.

FOR FURTHER INFORMATION CONTACT: Susan A. Homire, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee to the Science Board to the Food and Drug Administration. This subcommittee has been established to address issues related to science and research in FDA. The subcommittee will meet several times over the next 6 to 9 months to develop preliminary recommendations for the Science Board on a process for review of research programs within FDA. During this period there will be opportunities for public comment; these opportunities will be announced in the Federal Register at least 15 days prior to each scheduled public meeting. The subcommittee's preliminary recommendations will be presented to the Science Board for full public discussion at a future Science Board meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: May 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–12877 Filed 5–22–96; 8:45 am]

BILLING CODE 4160–01–F

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of the clinical hold review committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of

any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in August 1996. Biological product companies may submit review requests for the August meeting by June 28, 1996.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. FDA regulations in § 312.42 describe the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting a review committee to review clinical holds (61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17, 1995. It will meet quarterly or semiannually. The committee last met in May 1996. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its August 1996 meeting. Submissions should be made by June 1, 1996, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13042 Filed 5–22–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA 301]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Quality Control (MEQC) Payment Error Rates; *Form No.:* HCFA–301; *Use:* This certification is the new form by which States will report their MEQC payment error rate findings. This form represents aggregate data which were formerly collected through the Integrated Review Schedule; *Frequency:* Semi-annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:*

51; *Total Annual Responses:* 102; *Total Annual Hours:* 22,515.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–12961 Filed 5–22–96; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Submission for OMB Review; Comment Request; ''Screen for Alcohol Problems in the Elderly'' Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the Federal Register on February 27, 1996, and allowed 60 days for public comment. There were seven (7) requests for additional information about this data collection activity, but no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after September 28, 1997, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Screening for Alcohol Problems in the Elderly. *Type of Information Collection request:* NEW. Need and Use of Information Collection: The information proposed for collection will be used by the NIAAA to develop an alcohol problem screening instrument suitable for use with the population age 65 and over and that can be administered in health care settings. The prevalence of alcohol problems among older persons is not well established. The instruments used for assessment are often not sensitive to alcohol abuse and dependence in this population, and many alcohol-related problems go undetected.

Frequency of Response: On occasion. *Affected Public:* Individuals and small businesses. *Type of Respondents:* The elderly (65 and older) and physicians. *Estimated Number of Respondents:* 636. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* .281. *And Estimated Total Annual Burden Hours Requested:* 89.2. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Patients/500	1	500	.3340	167
Physicians/136	1	136	.0835	11.4
Total Number of Respondents: 636 (318 per year).				
Total Number of Responses: 636 (318 per year).				
Total Hours: 178.4 (89.2 per year).				

REQUEST FOR COMMENTS: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (CPR), NIAAA, NIH, Willco Building 6000, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

DIRECT COMMENTS TO OMB: Written 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 Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (CPR), NIAAA, NIH, 6000 Willco Building, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–8766.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 24, 1996.

Dated: May 10, 1996.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 96–12932 Filed 5–22–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection for Renewal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Services (Service) is planning to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for continuing approval under the provisions of the Paperwork Reduction Act. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comments and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service; Mail Stop 224—Arlington Square; 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Certification of Hunting and Fishing License Holders and Amendment.

OMB Approval Number: 1018–0007.

Abstract: The Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act provide that funds are apportioned to the States in accordance with a prescribed formula. One factor in the apportionment formula for each Act is the number of paid fishing/hunting license holders in each state. The acts require State Fish and Game Departments to certify the number of paid hunting and sport/recreational fishing license holders prior to the fiscal year for which the apportionment is made. The information collected is used by the Service to compute the apportionment of grant funds available to each State as provided by the statutory formulae. The information on license sales is made available to the public through a news release. It is used by the Service and the public as indicators of trends in sport hunting and fishing and has been compiled and distributed for many years.

Service Form Number(s): Form 3–154a (Certification of Hunting/Fishing License Holders); Form 3–154b (Summary of Hunting and Sport Fishing Licenses Issued).

Frequency: Annually.

Description of Respondents: State and Local governments.

Completion Time: The reporting burden is estimated to be 1 hour.

Annual Responses: 50.

Annual Burden Hours: 50.

Dated: May 16, 1996.

Daniel M. Ashe,

Assistant Director—External Affairs.

[FR Doc. 96–12978 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Request for Reinstatement Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the collection of information requirement described below to the Offices of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act. Copies of the collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224–Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 704/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Grant Agreement and Grant Amendment.

OMB Approval Number: 1018–0048.

Abstract: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act and the Coastal Wetlands Planning, Protection and Restoration Act. The Service uses the information collected to make awards, including determining if the estimated cost is reasonable, the cost sharing is consistent with the applicable program statutes, and whether sufficient Federal funds are available for obligation. The State uses the forms to request funds and identify proposed cost sharing. An amendment to the Grant Agreement is initiated by the grantee (State) to request a change to a previously approved Grant Agreement. The information is used to revise a previous funding obligation or document the approval of revisions requested.

Service Form Number(s): 3–1552 (Grant Agreement); 3–1591 (Amendment to Grant Agreement).

Frequency: Annually.

Description of Respondents: State and Territorial governments.

Completion Time: The reporting burden is estimated to be 1 hour for each form per respondent.

Annual Responses: 56 (It is estimated that 56 State and/or Territorial governments will submit an average of 26 grant agreements and/or amendments and that ½ of such grants will be amended.)

Annual Burden House: 1,456.

Dated: May 16, 1996.

Daniel M. Ashe,

Assistant Director—External Affairs.

[FR Doc. 96–12979 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[(4810–32) (602)]

Closure of Public Lands, Roswell District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Closure Notice of Public Lands.

SUMMARY: Notice is hereby given that the public lands within the Department of Treasury, Federal Law Enforcement Training Center (FLETC) withdrawal request are closed to all uses and publics except those having prior authorization. This closure is intended to protect the public.

DATES: The closure will become effective on May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Bowers, Carlsbad Resource Area Office at 620 E. Greene, Carlsbad, NM 88220, (505) 887–6544.

SUPPLEMENTARY INFORMATION: The Department of Treasury, FLETC, has filed a withdrawal application for the following public lands to facilitate a multipurpose firearms training range and safety fan. This notice closes the lands to all uses and publics except those with prior authorization.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 27, N½, SW¼, and W½SE¼;
Sec. 28: SE¼SE¼.

T. 17 S., R. 25 E.,
Sec. 03, lots 3, 4, S½NW¼ and N½N½ S½.

The lands described aggregate 802.96 acres in Eddy County, New Mexico. The authority for this closure is 43 CFR 8364.1. Penalties for any person failing to comply with this closure are a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Dated: May 13, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–12956 Filed 5–26–96; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–06–1020–00]

Scoping Meetings on the Development of Standards for Rangeland Health and Guidelines for Grazing Management in New Mexico, Modify Land Use Plans, and Prepare National Environmental Policy Act (NEPA) Analysis Pursuant to the Planning Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of scoping meetings.

SUMMARY: The Bureau of Land Management (BLM) in New Mexico intends to develop statewide Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100) and modify all existing Land Use Plans (LUP) in the State. Draft Standards and Guidelines were prepared by the New Mexico Resource Advisory Council, formed last year, and assigned the task of developing Standards and Guidelines for New Mexico. The appropriate National Environmental Policy Act (NEPA) analysis will be prepared in accordance with the Planning Regulations (43 CFR Part 1600) for the adoption of statewide Standards for Rangeland Health and Guidelines for Grazing management. This notice invites public input on the development of Standards and Guidelines for New Mexico, on issues to be addressed and on alternatives to be considered in the NEPA analysis. To assist the public in making comments, a scoping packet for this project has been prepared. A packet can now be obtained at any Bureau of Land Management Office in New Mexico. Scoping packets will also be given out at the Scoping Meetings to be held throughout New Mexico.

DATES: Comments will be accepted at the Public Scoping Meetings listed below. In addition written comments will be accepted through June 28, 1996. This will end the comment period that was announced in the Vol. 61, No 21, Wednesday January 31, 1996, page 3457, Federal Register Notice of Intent.

ADDRESSES: Any comments or requests to be placed on the mailing list should be sent to Rangeland Health Project (93100), Bureau of Land Management, P.O. Box 27115, Santa Fe, NM, 87502–0115. If you attend and sign in at a Scoping Meeting or send in comments you will be placed on the mailing list.

FOR FURTHER INFORMATION CONTACT: J.W. Whitney at (505) 438–7438.

SUPPLEMENTARY INFORMATION: A total of sixteen public Scoping Meetings (open houses) will be held. Location and schedule for the meetings are:

June 10, 1996 at 7:00 pm, at the County Commission Chamber, 300 Shakespeare, Lordsburg, NM.

June 12, 1996 at 7:00 pm, at the Sierra County Civic Center, 400 West 4th Street, Truth or Consequences, NM.

June 12, 1996 at 7:00 pm, at the BLM Albuquerque District Office, 435 Montano Road NE, Albuquerque, NM.

June 13, 1996 at 7:00 pm, at the Cuba High School Cafetorium, 50 County Road 13, Cuba, NM.

June 13, 1996 at 7:00 pm, at the BLM Socorro Resource Area Office, 198 Neel Ave, Socorro, NM.

June 17, 1996 at 7:00 pm, at the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM.

June 18, 1996 at 7:00 pm, at the BLM Taos Resource Area Office, 226 Cruz Alta Road, Taos, NM.

June 18, 1996 at 7:00 pm, at Morgan Hall, 109 E. Pine, Deming, NM.

June 18, 1996 at 7:00 pm, at the Crownpoint Institute of Technology, Multi-Purpose Room, Lower Point Road, Crownpoint, NM.

June 19, 1996 at 7:00 pm, at the Alamogordo City Civic Center, Rooms A & B, 800 First Street, Alamogordo, NM.

June 19, 1996 at 7:00 pm, at the Antonito Chamber of Commerce, 112 Main Street, Antonito, CO.

June 19, 1996 at 7:00 pm, at the BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM.

June 20, 1996 at 7:00 pm, at the BLM Las Cruces District Office, 1800 Marquess Street Las Cruces, NM.

June 24, 1996 at 7:00 pm, at the Rural Events Center, Glencoe, NM.

June 25, 1996 at 7:00 pm, at the Carlsbad Library Annex, 101 S. Halaguena, Carlsbad, NM.

June 26, 1996 at 7:00 pm, at Pearson Auditorium, New Mexico Military Institute, Roswell, NM.

Public Input Requested

This notice invites public input on the development of Standards and Guidelines for New Mexico, on issues to be addressed and on alternatives to be considered in the NEPA analysis. Refer to the Vol. 61, No 21, Wednesday January 31, 1996, page 3457, Federal Register Notice of Intent for additional supplementary information including a description of possible alternatives and anticipated issues.

Dated: May 16, 1996.

Gil Lucero,

Associate State Director

[FR Doc. 96–12934 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–FB–M

[CO–030–06–1610–00–1784]

Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Colorado Resource Advisory Council (SW RAC) will meet on Thursday, June 13, 1996, at the Gunnison County Electric Association conference room, 37250 US Highway 50, Gunnison, Colorado, and on Thursday, July 11, 1996, at the Silverton Visitor Center, 414 Greene, Silverton, Colorado.

DATES: The meetings will be held on Thursday, June 13, 1996, and on Thursday, July 11, 1996. Both meetings will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For further information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970–249–7791; TDD 970–249–4639.

SUPPLEMENTARY INFORMATION: The June 13, 1996, meeting is scheduled to begin at 9:00 a.m. in the Gunnison County Electric Association conference room, 37250 US Highway 50, approximately two and one-half miles west of Gunnison, Colorado. The agenda will focus on internal resource advisory council business, including future meeting schedules, issue identification, and overall RAC direction, and an evaluation of the past year's meetings. Time will be provided for public comments.

The Thursday, July 11, 1996, is scheduled to begin at 9:00 a.m. at the Silverton Visitors Center, 414 Greene, Silverton, Colorado. The agenda will focus on off-highway vehicle and other recreational use, historical resources, and the clean-up of the Animas River. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for the Council meeting will be maintained in the Montrose District Office and will be

available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: May 13, 1996.

Mark W. Stiles,

District Manager.

[FR Doc. 96–12896 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–JB–P

[Ut–050–1430–01–24–1A]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Sanpete County, Utah have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The land will not be offered for sale until at least 60 days after the date of this notice. Salt Lake Meridian, Utah. T. 19 S., R. 2 E. Section 19, Lot 8 and Section 30, Lots 5 and 8, containing 10.2 acres.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the Federal Register, the lands described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land is being offered to Mr. A.C. Robertson and Mr. Douglas Bjerregaard of Mayfield, Utah, at not less than the appraised fair market value. All minerals in the lands would be reserved to the United States. Detailed information concerning the sale will be available to interested parties from the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the sale of the lands to the District Manager, Richfield District at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Jerry W. Goodman,

District Manager, Richfield District.

[FR Doc. 96–12898 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–DQ–P

[WY–060–06–1430–01; WYW–106581]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, direct sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

Parcel Number 1

T. 56 N., R. 62 W.,
Sec. 6, lot 16.
49.26 acres.

Parcel Number 2

T. 56 N., R. 63 W.,
Sec. 1, lot 17
44.83 acres.

Parcel Number 3

T. 57 N., R. 62 W.,
Sec. 30, lots 15, 16, 17;
Sec. 31, lot 8.
161.97 acres.

Parcel Number 4

T. 57 N., R. 63 W.,
Sec. 13, NE¼SW¼;
40.00 acres.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of four isolated parcels of public lands. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcels will be offered by direct sale to the adjoining private landowner. The adjoining landowner will be required to submit proof of adjoining land ownership before a bid can be accepted. The publication of this Notice of Realty Action in the Federal Register shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. A bid must be received in the Newcastle Resource Area Office by 11:00 a.m., July 24, 1996, at which time the sealed bid envelopes will be opened and the high bid announced. The bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words ''Public Land Sale (W–106581), Sale held July 24, 1996.''

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior—BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the bidder and the deposit shall be forfeited and disposed of as other receipts of the sale.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Excepting and Reserving to the United States: All archaeological resources within the land described as: NW¼ of lot 15, NW¼ of lot 17, sec. 30; NE¼ of lot 8, sec. 31, T. 57 N., R. 62 W., Sixth Principal Meridian, together with the right of ingress, egress, and temporary occupancy needed to identify, monitor, preserve, protect, mitigate, and remove any archaeological resources within or from the described property. Such right may be exercised by the United States or by any person or organization expressly authorized by the United States to conduct archaeological resource investigations on the described property.

For a period of 45 days from the date of this notice published in the Federal Register, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East ''E'' Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: May 14, 1996.

Don L. Hinrichsen,

District Manager.

[FR Doc. 96–12959 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–22–M

[MT–024–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Montana, Miles City District, Interior.

ACTION: Notice.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 and 40 CFR 1505.2, the Record of Decision has been prepared for the Big Dry Resource Area. The Record of Decision approves decisions for management of approximately 1.7 million federal surface acres and 7.6 million federal mineral acres managed by the Bureau of Land Management. These federal acres are located in all or portions of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Valley and Wibaux counties.

EFFECTIVE DATE: The Record of Decision was signed in April, 1996 by Montana State Director, Larry Hamilton.

ADDRESSES: Reading copies of the Record of Decision are available at each public library for the counties listed above. Public reading copies will also be available at the following Bureau of Land Management locations:

External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, MT

Miles City District Office, 111 Garryowen Road, Miles City, MT

FOR FURTHER INFORMATION CONTACT: Mary Bloom, RMP/EIS Team Leader, Miles City District Office, 111 Garryowen Road, Miles City, MT, 406–232–4331.

SUPPLEMENTARY INFORMATION: The Record of Decision approves the decisions made in the 1995 Proposed Big Dry Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS), with one exception, management of Calypso Trail.

The Proposed Big Dry RMP and Final EIS was issued in February, 1995. Thirteen letters protesting the plan, some with multiple signatures, were received by the Director. Further planning was needed before approving the decision for Calypso Trail and a separate Record of Decision will be made available for that decision. The remaining protests did not result in any changes to the resource management plan.

Dated: May 10, 1996.

David D. Swogger,

Acting District Manager.

[FR Doc. 96–12894 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–DN–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 46 N., R. 7 W.,

—Dependent and Independent Resurvey, (Group 1037) accepted April 4, 1996, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 5 N., R. 12 E.,

—Supplemental plat of the NE¼ of sec. 23 and the N½ of sec. 24, accepted April 25, 1996, to meet certain administrative needs of the BLM, Folsom Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: May 9, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–12958 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1110–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 13, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of sections 20 and 21, and describing and correcting the function of certain corners in sections 20 and 21, T. 9 S., R. 28 E., Boise Meridian, Idaho, Group No. 920, was accepted, May 13, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 13, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12975 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. May 13, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the survey of tracts 37 and 38, T. 4 N., R. 2 E., Boise Meridian, Idaho, Group No. 911, was accepted, May 13, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 13, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12976 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. May 14, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and a metes-and-bounds survey in section 24, T. 6 N., R. 35 E., Boise Meridian, Idaho, Group No. 923, was accepted, May 14, 1996.

The plat, in two sheets, representing the dependent resurvey of portions of the west and north boundaries, and subdivisional lines, and a metes-and bounds survey in sections 3, 10, 15, 19, 20, 21, and 22, T. 6 N., R. 36 E., Boise Meridian, Idaho, Group No. 923, was accepted, May 14, 1996.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 14, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12977 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[(NMNM–95884) (4810–32) (603)]

Notice of Proposed Withdrawal and Opportunity for Public Meeting: New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Proposed Withdrawal and Opportunity for Public Meeting: New Mexico.

SUMMARY: The United States Department of Treasury, Federal Law Enforcement Training Center (FLETC), has filed an application to withdraw 802.96 acres of public land and an additional 480.26 acres of Federally reserved mineral estate underlying reconveyed surface estate lands (Department of Treasury, FLETC). The publication of this notice in the Federal Register will segregate the public lands from all forms of appropriation under the public land laws, including location and entry under the general mining laws for up to two (2) years. The lands have been and remain open to mineral leasing.

DATES: Comments or requests for meeting should be received on or before August 21, 1996.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–7115.

FOR FURTHER INFORMATION CONTACT: Gary Bowers, Carlsbad Resource Area Office at 620 E. Greene, Carlsbad, NM 88220, (505) 887–6544.

SUPPLEMENTARY INFORMATION: On April 10, 1996, the United States Department of Treasury filed an application to withdraw the following described lands from location and entry under the United States mining laws and all forms of appropriation under the public land laws, subject to valid existing rights. The purpose of this withdrawal is to facilitate a multipurpose firearms training range and safety fan to protect the public.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 27, N½, SW¼, and W½SE¼;
Sec. 28, SE¼SE¼.
T. 17 S., R. 25 E.,
Sec. 03, lots 3, 4, S½NW¼, and N½N½S½.

The lands described aggregate 802.96 acres in Eddy County, New Mexico.

The area described below is Federally reserved mineral interests underlying reconveyed surface estate lands (Department of Treasury, FLETC). This notice closes the land to mining.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 33, SE¼;
Sec. 34, SW¼.
T. 17 S., R. 25 E.,
Sec. 04, lots 1, 2, and S½NE¼.

The land described contains 480.26 acres in Eddy County, New Mexico.

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 New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–6544.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. Public meeting requests must be submitted in writing to the New Mexico State Director, BLM, within 90 days from the date of publication of this notice.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied, canceled, or the land withdrawal is approved prior to that date. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: May 13, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–12957 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Information Collection Request for Renewal/Reinstatement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the following proposal for the collection of information listed below to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comments and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224—Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Sandhill Crane Harvest Questionnaire.

OMB Approval Number: 1018–0023.

Abstract: The Migratory Bird Treaty Act and the Fish and Wildlife Act of 1956 designates the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for setting hunting regulations that allow appropriate harvest that allow for the populations' well being. Beginning in 1960, hunting seasons have been allowed for sandhill cranes in portions, or in all, of nine midwestern states—Colorado, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming and Kansas. The information collected will be used to estimate the magnitude, geographical and temporal distribution of sandhill crane harvest and the portion it constitutes of the total population. Also, data collected will be used to determine the effects on harvests of daily bag limits to preclude over-harvests, and assist in determining if changes in hunting dates and the areas of States open to hunting are warranted.

Service Form Number(s): 3–530; 3–530A.

Frequency: Annually.

Description of Respondents: Individuals and households.

Completion Time: The reporting burden is estimated to average 5 minutes per respondent.

Annual Responses: Recent Service experience indicates that about 3,600 hunters will respond to the questionnaire each year. This is a decrease of about 4,400 respondents. The number of hunters contacted annually has decreased due to a change in sampling rates. A recent Service evaluation of sampling rates indicated that sampling rates could be reduced without compromising the utility of survey results for population management purposes.

Annual Burden Hours: 299.

Dated: May 3, 1996.

Robert G. Streeter,

Assistant Director—Refuges and Wildlife.

[FR Doc. 96–12974 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed settlement agreement In re AM International, Inc., et al., Case No. 82–B–04922 (Bktcy. N.D. Ill.) and In re AM International, Inc., et al., Case No. 93–582 (Bktcy. Del.), was lodged on May 13, 1996 with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. The proofs of claim in these actions seek to recover, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. §§ 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency (''EPA'') at the Fisher Calo Chemical Superfund Site near LaPorte, Indiana (''Site'').

The proposed settlement agreement embodies an agreement with AM International Inc. (''AM''): (1) to pay $43,384 to the Hazardous Substances Superfund for partial reimbursement of EPA's past and future response costs at the Site; and (2) to pay $1,800 to the U.S. Department of the Interior (''DOI'') to resolve potential claims for natural resources damages in connection with the Site.

The proposed settlement agreement also provides AM with releases for civil liability under Section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973, for EPA's past and future response cost and for natural damages at the Site for resources under the trusteeship of the Secretary of the Interior and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to In re AM International, Inc., et al, DOJ Ref. No. 90–7–1–23D. In addition, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), any member of the public who desires a public meeting in the area affected by the proposed settlement agreement in order to discuss the proposed settlement agreement prior to its final entry by the court may request that such a meeting be held. Any such request for a public meeting should be submitted within fifteen (15) days from the date of this publication and sent to the same address and bear the same reference as indicated above for submission of comments.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Northern District of Illinois, Dirkson Building, Room 1200, 219 South Dearborn Street, Chicago, Illinois 60604; the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, Attn: Andrew Warren; and at the Consent Decree Library, 1120 G Street, N.W., Fourth Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, N.W., Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–12983 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given of the proposed addition of 73 parties to Consent Decree in *United States* v. *Keystone Sanitation Company, Inc., et al.*, Civil Action No. 1:CV–93–1482.

On September 27, 1993, the United States filed a complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a) against the owners and operators, and certain parties who arranged for disposal or treatment of hazardous substances at the Keystone Sanitation Landfill Superfund Site (the ''Site'') in Union Township, Adams County, PA. Several of the defendants sued approximately 180 third-party defendants, who in turn sued approximately 600 fourth-party defendants, including the third and

fourth-party defendants proposed for addition to the Consent Decree.

A Consent Decree was lodged with the United States District Court for the Middle District of Pennsylvania for public comment on April 5, 1996. 61 FR 18411 (April 25, 1996). The proposed Decree, entered into under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), resolves the liability of parties determined by EPA to be ''de micromis'', which for purposes of this Site means that they contributed less than 1800 cubic yards of municipal solid waste, and within such amount, less than 55 gallons or 100 pound of materials contain hazardous substances. With the April 5th lodging, the United States solicited pubic comment upon the proposed Decree's resolution of 95 third and fourth-party Defendants' liability for response costs incurred and to be incurred at the Site. The defendants will pay $1 each. With today's notice, the United States seeks comment on its addition of 73 more parties to this Decree.

The Department of Justice will accept written comments relating to the proposed addition of parties to the Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *UnitedStates* v. *Keystone Sanitation Company, Inc. et al.,* DOJ No. 90–11–2–656A.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Federal Building and Courthouse, 228 Walnut Street, Room 217, Harrisburg, Pennsylvania, 17108; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a coy of the proposed Consent Decree, please enclose a check in the amount of $1.75 (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

In addition, copies of the Decree, as well as the record supporting EPA's eligibility determinations regarding the present 73 defendants proposed for addition to the Decree, as well as for the first 95 settlors, are available at the following record repositories established by EPA near the Site pursuant to Section 117(d) of CERCLA, 42 U.S.C. 9617(d):

U.S. EPA, Region III (address above), Contact: Anna Butch, 215–597–3037

Hanover Public Library, 301 Carlisle St. Hanover PA 17331, Contract: Priscilla McFarrin, 717–632–5183

St. Mary's Church of Christ, 1441 East Mayberry Road Westminster MD 21157, Contact: Jeanne Bechtel, 301–346–7977

The Decree and record are also available at Filias & McLucas, 4309 Linglestown Road, Harrisburg, PA 17112, the repository created to house documents produced during discovery in the present litigation. Persons wishing to view documents at Filias & McLucas should call 717–845–6418 to arrange an appointment.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–12981 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Fastcast Consortium

Notice is hereby given that, on April 15, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Fastcast Consortium (''Fastcast'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Accelerated Technologies, Inc., Austin, TX; Compression Engineering, Indianapolis, IN; DTM Corporation, Austin, TX; The Goodyear Tire & Rubber Company, Akron, OH; Komtek, Worcester, MA; Kovatch Castings, Inc., Uniontown, OH; Laser Fare Advanced Technology Group, Narragansett, RI; Laserform, Inc., Auburn Hills, MS; Manufacturing Sciences Corporation, Oak Ridge, TN; Osteonics Corporation, Allendale, NJ; Plynetics Corporation, San Leandro, CA; Solidform, Inc., Fort Worth, TX; TexCast, Inc., Inc., Houston, TX; 3D Systems Corporation, Valencia CA; Truecast Precision Castings, Inc., Louisville, KY; and Walworth Foundaries, Inc., Darien, WI.

Fastcast's area of planned activity is research and development for the purpose of advancing the state of the art of investment casting in the United States.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12982 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 95–1804 (HHG), D.D.C.]

United States v. National Automobile Dealers Association; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *National Automobile Dealers Association,* Civil Action 95–1804 (HHG), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in Room 200 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. National Automobile Dealers Association, Defendant.

[Civil Action No. 95–1804 (HHG)]

United States' Response to Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the ''APPA'' or ''Tunney Act''), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on September 20, 1995, when the United States filed a Complaint charging that the National Automobile Dealers Association

(''NADA'') had entered into agreements intended to lessen competition in the retail automobile industry in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The first count of the Complaint alleges that the NADA agreed to orchestrate a group boycott of automobile manufacturers to coerce the manufacturers to decrease the discounts offered to large volume buyers and to eliminate consumer rebates.

The second count of the Complaint alleges that the NADA agreed to urge its dealer members to maintain new vehicle inventories at levels equal to 15–30 days' supply. The third count of the Complaint alleges that the NADA solicited and obtained agreements from member dealers not to engage in advertising that revealed the dealers' invoice cost, or cost of buying the vehicle from the manufacturer. Finally, the fourth count of the Complaint alleges that the NADA agreed to urge its members not to do business with automobile brokers.

The Complaint seeks injunctive relief that would prevent the NADA from continuing or renewing the alleged practices and agreements, or engaging in other practices or agreements that would have a similar purpose or effect.

Simultaneous with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement (''CIS''), and a stipulation signed by the NADA for entry of the decree. The proposed Final Judgment contains a general prohibition against any agreements by the NADA with dealers to fix, stabilize or maintain prices at which motor vehicles may be sold or offered in the United States to any consumer. The proposed Final Judgment also prohibits the NADA from urging, encouraging, advocating or suggesting that dealers adopt specific prices, specific margins, specific discounts or specific policies relating to the advertising of prices or dealer costs of motor vehicles. Similarly, the decree prohibits the NADA from discouraging dealers from adopting specific pricing systems or specific policies relating to the advertising of prices or dealer cost of motor vehicles. The proposed decree further prohibits the NADA from urging dealers to reduce their business with particular types of persons or to do business with particular persons only on specific terms. It will also prohibit the NADA from terminating the membership of any dealer for reasons relating to that dealer's pricing or advertising of prices or dealer costs.

As required by the Antitrust Procedures and Penalties Act, the NADA filed with this Court on October 11, 1995 a description of written and oral communications on their behalf pursuant to the reporting requirements of Section 16(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposed decree, were published in the Washington Post for eight days over a period beginning September 30, 1995. The proposed Final Judgment and CIS were published in the Federal Register on October 2, 1995. 60 Fed. Reg. 51,491.

The 60-day period for public comments commenced October 2, 1995 and expired on December 5, 1995. The United States received one comment on the proposed Final Judgment, a letter from Mr. Harold E. Kohn, Esquire, representing Potamkin Auto Center, Ltd. As required by 15 U.S.C. 16(b), this comment is being filed with this response. (Exhibit A). The United States sent Mr. Kohn a letter individually responding to his inquiry. That correspondence is also being filed with this response. (Exhibit B).

In his comment, Mr. Kohn proposed that the notification that the NADA is required to provide its members include an additional statement that group activities by competitors designed to restrict price competition are illegal, even when those activities are not sanctioned by the trade association. He also raised concerns about a policy recently adopted by an automobile manufacturer prohibiting its dealers from selling automobiles to third-party resellers. Finally, Mr. Kohn requested an opportunity to be heard before this Court before the final decree is entered.

The Department has carefully considered Mr. Kohn's comment. Nothing in this comment has altered the United States' conclusion that the proposed Final Judgment is in the public interest. The decree is fully adequate to prevent continuation or recurrence of the violations on the part of the NADA that were alleged in the complaint. Because the complaint does not address the activities of dealers acting independently of the NADA and they are not defendants, it would be inappropriate to impose on them the additional notification provisions suggested by Mr. Kohn. Mr. Kohn's concerns regarding conduct by an automobile manufacturer and its dealers also involve entities that are not parties to this case and activities beyond the scope of the conduct alleged in the complaint. The main issue before the Court in this Tunney Act proceeding is whether the remedies provided in the proposed Final Judgment are ''so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995). Nothing submitted by Mr. Kohn suggests that the proposed Final Judgment does not satisfy this standard. Accordingly, the Department urges the Court to enter the proposed Final Judgment without further proceedings.

Dated: May 8, 1996.

Respectfully submitted,

Robert J. Zastrow,

Assistant Chief, Civil Task Force, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 300, Washington, D.C. 20530.

Certificate of Service

I hereby certify that I cause a copy of the foregoing to be mailed, first class, postage prepaid, this 8th day of May, 1996, to:

Glenn A. Mitchell, Esq., Stein, Mitchell & Mezines, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036

Arthur Herold, Webster, Chamberlin & Bean, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006

Robert J. Zastrow.

December 1, 1995.

Mary Jean Moltenbrey, *Chief, Civil Task Force II, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 300, Washington, D.C. 20004*

Re: *United States of America v. National Automobile Dealers Association,* Civil Action No. 1:95CV01804

Dear Ms. Moltenbrey: Potamkin Auto Center, Ltd. submits this Comment to address the Proposed Final Judgment (''PFJ'') between the United States of America (the ''Government'') and the National Automobile Dealers Association (''NADA'') in the above-reference civil action. This Comment focuses upon provisions of the PFJ directed toward eliminating the practice of boycotting of automobile brokers by dealers, or by manufacturers at dealers' urging.

Potamkin Auto Center, Ltd. (''Potamkin'') owns and operates auto centers in Westbury, Brooklyn, Manhattan and Nanuet, New York. The auto centers compete with franchised dealerships for sales and leases of new automobiles by purchasing multiple brands of new automobiles from franchised dealers at discounted prices and then selling directly to the public at highly competitive prices. As such, Potamkin may be considered an ''automobile broker'' as that term is used in the Complaint and Competitive Impact Statement filed with the PFJ in this case.

EXHIBIT A—Civil Action No. 95–1804

The NADA's published encouragement to its dealer-members to ''[r]efuse to do business with brokers or buying services'' was intended to eliminate price competition by automobile brokers. Potamkin therefore supports the provisions of the PFJ that enjoin the NADA from advocating that dealers ''refuse to do business with particular persons or types of persons.'' PFJ at ¶ IV.D.

Potamkin believes that the NADA's advocacy of group boycott activity has had and continues to have substantial anti-competitive effects on the market for sales and leasing of new automobiles, resulting in higher prices for consumers.

For example, on November 1, 1995, American Honda Motors Co., Inc., having ''been made aware that some Authorized Honda Dealers are transferring Honda vehicles to intermediaries which retail or lease the vehicles,'' implemented a policy that prohibits all Honda dealers in the United States from transferring new automobiles to certain third party resellers or leasing companies who operate showrooms for and/or advertise the sale or leases of new Honda automobiles. A copy of Honda's July 24, 1995 announcement and policy statement is attached hereto as ''Exhibit A.'' Potamkin believes that this policy represents Honda's joinder in the dealers' agreement to eliminate price competition from automobile brokers.

As the Government states in the Competitive Impact Statement: An agreement by a trade association or its members not to do business with other competitors or customers for purposes of restricting price competition is a *per se* violation of the Sherman Act.

Competitive Impact Statement at 7

Potamkin urges that this statement (or a similarly worded statement) should be included in the written notification that NADA must publish and send to its dealer-members. These dealer-members should be informed clearly that group activities by competitors designed to restrict price competition are illegal, whether or not such group activities are officially sanctioned by the trade association.

Potamkin respectfully requests an opportunity to appear before the Court and be heard on this issue, and to present additional evidence of concerted anti-competitive activities by automobile dealers and manufacturers.

Potamkin also requests that the Antitrust Division expand its investigation to include practices such as those in which Honda has engaged.

Respectfully submitted,

Harold E. Kohn,

KOHN, SWIFT & GRAF, P.C., 1101 Market Street, Suite 2400, Philadelphia, PA 19107–2924, (215) 238–1700.

Attorneys for Potamkin Auto Center, Ltd.

Via Certified Mail Return Receipt Requested

To: All Honda Automobile Dealers
Date: July 24, 1986
Subject: AHM'S Wholesaling Policy

Enclosed is a copy of the Wholesaling Policy (the ''Policy''). Beginning November 1, 1995, the Honda Division of American Honda Motor Co., Inc., (''AHM'') will enforce the Policy in order to ensure that each Honda dealer complies with AHM's Honda Automobile Dealer Sales and Service Agreement (the ''Dealer Agreement''). Although advance notification is hereby provided AHM's position is that applicable law does not require any advance notice prior to the adoption, implementation and enforcement of the Policy.

While AHM's position is that the Policy is not a modification of your Dealer Agreement and that AHM is not required to file the Policy with State agencies, we have, in an abundance of caution and to the extent such filing may be deemed to be required, also filed a copy of the Policy with any appropriate State agencies. If the Policy is deemed to be a modification to your Dealer Agreement, you may believe you have certain rights, under applicable state law to contest the Policy. To the extent required, you are hereby notified of the existence of such potential rights.

All questions pertaining to this letter and the Policy should be addressed to AHM's Wholesale Policy Administrator which position is currently held by Richard Szamborski, Assistant Vice President Market Operations, Honda Division.

Please acknowledge receipt of this letter and the Policy of signing and dating the attached Dealer Acknowledgment and returning the Dealer Acknowledgment to your Zone Sales Office within ten days of the date of this letter.

Very truly yours,

Richard Coiliver,

Senior Vice President, Auto Sales.

Attachments

To: All Honda Automobile Dealers in the United States.
Date: July 24, 1996.
Subject: AHM's Wholesaling Policy.

The Honda Division of American Honda Motor Co., Inc. (''AHM'') has been made aware that some Authorized Honda Dealers are transferring Honda vehicles to intermediaries which retail or lease the vehicles. AHM believes that such wholesaling is inconsistent with AHM's Automobile Dealer Sales and Service Agreement (the ''Dealer Agreement''), which limits Authorized Honda Dealers to retail sales and retail leases from the Authorized Honda Dealers' premises and prohibits the creation of additional dealership locations. AHM also believes that transfers to intermediaries are detrimental to the best interests of AHM's success in the market, impair the ability of AHM to provide the highest level of customer satisfaction, create situations that tarnish the reputation of Honda and Honda's Authorized Dealers for quality automobiles and service and lead to lost sales.

Accordingly, Honda adopts the following policy with respect to transfers of Honda Automobiles by Authorized Honda Dealers to intermediaries.

1. Definitions

1.1 As used herein, ''Wholesaling'' and ''Wholesale Sales'' shall mean the sale or lease and delivery of new Honda Automobiles to persons other than (1) the ultimate end user of such vehicles, or (2) leasing companies that do not operate unauthorized dealerships (as described more fully below), or (3) another Authorized Honda Dealer (Transfers of Honda Automobiles between and among Authorized Honda Dealers are permitted as long as AHM is timely notified of each transfer *and* such transfer is consistent with both Authorized Honda Dealers' obligations to provide appropriate market representation and accurate reporting to AHM. For allocation purposes any such transfer will be attributed to the Authorized Honda Dealer who makes the sale or leases to the ultimate end user). By way of example, Wholesaling shall include:

(a) *Transfer to third-party resellers who sell or lease that new Honda Automobiles to end user as new vehicles.*

(b) *Trnasfers to third-party leasing companies that operate (1) showrooms and/or (2) otherwise engage in sales lease or service activities typically done by Authorized Honda Dealers.*

Included in this classification would be, by way of example, third-party leasing companies that display new Honda Automobiles on their premises or hold new Honda Automobiles in stock, advertise for sale or lease new Honda Automobiles from their premises, or accessorize new Honda Automobiles for sale or lease to end users.

(c) By way of example, Wholesaling does NOT include (1) Transfers to third-parties who are and users and are NOT resellers or lessons of new vehicles, (2) Transfer of used vehicles to any party for any purpose, (3) Transfers to leasing companies that do NOT operate showrooms or otherwise engage in sales, advertising and/or service activities typically done by Authorized Honda Dealers. The sole function of such leasing companies is to lease cars to end users who do not wish to lease directly from an Authorized Honda Dealer. Such companies do NOT display new Honda Automobiles on their premises, do NOT hold new Honda Automobiles in stock, do NOT advertise for sale or lease new Honda Automobiles from their premise and do NOT accessorize new Honda Automobiles. Instead, such leasing companies are approached by an end user seeking to lease a specific, full-equipped new Honda Automobile, acquire such a new Honda Automobile from an Authorized Honda Dealer and lease said new Honda Automobile to such end user, and/or (4) Transfers of title to financial institutions in cases in which delivery of the Honda Automobile is made by the Authorized Honda Dealer directly to the ultimate end user and the transfer of title to the financial institution is scary for the purpose of financing sale or lease of the Honda Automobile.

1.2 As used Herein, ''Honda Automobiles'' is used as defined in Sections 12 B of the Dealer Agreement.

1.3 As used Herein, ''Policy'' refers to the Wholesaling Policy.

2. Restriction on Wholesaling

Effective November 1, 1995, AHM will strictly enforce the Dealer Agreement and require that Authorized Honda Dealers not engage in Wholesaling of Honda Automobiles.

3. Enforcement of Wholesaling Policy

3.1 *Submission of Reports.*

Pursuant to Section 7.3 of the Dealer Agreement, the Authorized Honda Dealer shall submit to AHM reports on a daily basis, which include the following information:

(a) The Vehicle Identification Number of each Honda Automobile transferred, sold or leased by the Authorized Honda Dealer.

(b) The name and address of the person (whether an individual or business) who has purchased or leased each such Honda Automobile (by Vehicle Identification Number) in accordance with AHM's reporting requirements in place at the time of the sale or lease.

(c) The calendar date of delivery to the transfers, purchaser or leaser of each such Honda Automobile, and

(d) Upon reasonable notice to the Authorized Honda Dealer such additional information may be required by AHM.

Refusal by the Authorized Honda Dealer to submit such reports constitutes breach of the Dealer Agreement. In case of such refusal, addition to the remedy set forth herein, AHM reserves the right to exercise all remedies permitted by Honda Dealer Agreement for a material breach thereof.

3.2 Audit of Authorized Honda Dealers.

Pursuant to Section 7.4 of the Dealer Agreement, AHM will conduct periodic audits of its Authorized Honda Dealers to verify the accuracy of reports submitted AHM pursuant to Section 3.1 hereof. Audits will be initiated on either of the following basis:

(a) AHM, in its sole discretion may conduct random audits of Authorized Honda Dealer, no more frequently than once every month,

(b) If AHM receives information from which it reasonably believes that an Authorized Honda Dealer is engaged in Wholesaling. AHM will audit the Authorized Honda Dealer's records to determine whether such information is correct.

Refusal by an Authorized Honda Dealer to permit AHM to conduct the audits described herein constitutes a breach of the Dealer Agreement. In case of such refusal, in addition to the remedies set forth herein, AHM reserves the right to exercise all remedies permitted by the Dealer Agreement for a material breach thereof.

3.3 *Preliminary Finding of a Wholesaling Violation.*

AHM shall issue to the Authorized Honda Dealer a preliminary finding of a violation of this Policy when one or more of the following events occurs:

(a) The Authorized Honda Dealer makes either an oral or written refusal to submit the reports described in Section 3.1 hereof,

(b) After written request from AHM, the Authorized Honda Dealer neglects to submit the reports described in Section 3.1 hereof.

(c) The Authorized Honda Dealer refuses to submit to the audit describe in Section 3.2 thereof.

(d) Upon audit by AHM pursuant to Section 3.2 hereof, it is determined that reports submitted by the Authorized Honda Dealer to AHM are substantially inaccurate in that the Authorized Honda Dealer has inaccurately identified (by Vehicle Identification Number) the person (whether an individual or business) who has purchased or leased one or more Honda Automobiles from said Authorized Honda Dealer.

(e) Upon audit by AHM pursuant to Section 3.2 hereof, AHM has reason to believe that the Authorized Dealer has engaged in Wholesaling, or

(f) Upon other reliable evidence (which evidence will be described to the Authorized Honda Dealer, AHM has reason to believe that the Authorized Honda Dealer has engaged in Wholesaling.

AHM will notify the Authorized Honda Dealer in writing of any preliminary finding of a Wholesaling violation. Such notice will include a brief description of the basis for the preliminary finding.

3.4 *The Authorized Honda Dealer Response to Preliminary Finding Final Finding.*

The Authorized Honda Dealer will have fourteen (14) days from notification of any such preliminary finding to contest AHM's finding in writing by submission of sales data and/or other information that disproves said finding. Should the Authorized Honda Dealer fail to contest such finding within (14) days or should, AHM find that the Authorized Honda Dealers submission does not disprove such finding, then AHM will issue a final finding detailing the Authorized Honda Dealer's violation of this Policy.

4. AHM's Remedies in the Event of a Violation

In the event of a final finding by AHM that the Authorized Honda Dealer has violated the Policy.

4.1 For purposes of allocating vehicles, AHM will adjust the Authorized Honda Dealer's sales history to exclude retail sales credit earned on transfers found to violate the Policy.

4.2 AHM will charge-back all incentives paid by AHM related to translate of Honda Automobiles to violate the Policy; and

4.3 AHM will reduce marketing allowances available to the Automobile Honda Dealer pursuant to the current AHM marketing programs and proportionate to the number of Honda Automobiles which have been found to violate the Policy and/or charge-back all Dealer Marketing Allowance amounts (or similar payments) paid by AHM related to transfer of such Honda Automobiles.

4.4 Should AHM issue a second final finding of a violation of the Policy, then, in addition to the steps state above, AHM will,

(a) Not consider that Authorized Honda Dealer eligible for additional Honda Automobiles in excess of the standard allocation for one (1) year thereafter; and

(b) Not consider that Authorized Honda Dealer for any additional AHM dealership location(s) for five (5) years thereafter.

In the event that AHM issues more than two final findings of violations of the Policy against an Authorized Honda Dealer, then the remedies so forth in (a) and (b) of this subparagraph shall be made permanent.

4.5 Notwithstanding the above, AHM consider *any* Wholesaling to be inconsistent with the Dealer Agreement and AHM reserves its rights to take appropriate action to prevent such Wholesaling. Moreover, AHM will hold the Authorized Honda Dealer liable for any expenses or losses that AHM may incur as a result of any Wholesaling by that Authorized Honda Dealer, including, without limitation, expenses or losses resulting from (a) AHM's inability to notify customers of product recalls or other service information and product liability claims resulting therefrom and (b) consumer claims including claims in connection with intermediaries installing non-Honda equipment, providing inadequate service, or making misrepresentations.

May 8, 1996.

Harold E. Kohn, *Esquire, Kohn, Swift & Graf, P.C., 1101 Market Street, Suite 2400, Philadelphia, PA 19107–2924*

Dear Mr. Kohn: This responds to your letter of December 1, 1995, on behalf of your client, Potamkin Auto Center, Ltd. (''Potamkin''), concerning the proposed consent decree between the Department of Justice and the National Automobile Dealers Association (''NADA''). The proposed decree settles a civil antitrust suit in which the Department alleged that the NADA, through its officers and directors, conspired to lessen competition in the retail automobile industry.

Your letter addresses the notification that NADA must publish and send to its members to inform them of the decree's requirements. You ask that it include an additional statement that group activities by competitors designed to restrict price competition are illegal, whether or not such group activities are officially sanctioned by the trade association.

We have carefully considered your comment and have determined that the decree, along with its notification provisions, is fully adequate to prevent continuation or recurrence of the violations alleged in the complaint. The complaint alleged that the NADA engaged in conduct intended to limit price competition in the retail automobile sales industry. Accordingly, the prohibitions of the decree apply to the NADA, its officers, directors, employees and other persons acting on its behalf. Because the decree does not apply to the activities of dealers acting independently of the NADA, we have concluded that additional provisions directed at such actions would not be appropriate.

Your letter also raises concerns about a recent policy implemented by American Honda Motors Co., Inc. (''Honda'') that prohibits all Honda dealers in the United States from transferring new automobiles to certain third party resellers, a group that would include Potamkin. You ask that the Antitrust Division expand its investigation to include these and other related practices.

Your letter states that Honda's policy represents Honda's joinder in a dealers' agreement to eliminate price competition from automobile brokers. Based on the evidence available at the time the complaint was filed, the Department did not initiate a suit against any automobile manufacturer, and did not allege that any automobile manufacturer had entered into agreements with the NADA or automobile dealers. You do not provide evidence that the dealers had such an agreement or that Honda's action was part of such a conspiracy. Moreover, unilateral action on Honda's part, unless it constitutes monopolization or attempted monopolization, is not prohibited by the antitrust laws. If you have additional

information about Honda or other manufacturers, the Department would of course consider it.

Finally, you request the opportunity to appear before the Court to be heard regarding the decree's notification provisions and to present additional evidence of concerted activities by automobile dealers and manufacturers. Under Section 2 of the Antitrust Procedures and Penalties Act (the ''Tunney Act''), 15 U.S.C. § 16(b), which governs proposed final judgments such as this one, the Court may hold a hearing in order to make its determination as to whether the proposed decree is in the public interest, but is not required to do so. As discussed above, we believe that the decree fully redresses the violations alleged in the complaint and that the addition you propose to the decree's notification provisions would apply to activities not covered by that decree. Moreover, a Tunney Act hearing is an inappropriate forum to consider evidence of alleged concerted conduct that is not addressed in the complaint. *See* U.S. v. Microsoft, 56 F.3d 1448 (D.C. Cir 1995). If you are aware of any such evidence, we encourage you to bring it to our attention. While we do not believe the hearing you request is appropriate, we will provide a copy of your letter, along with this response, to the Court when we file our response to public comments.

I hope this letter responds to your concerns. Thank you for your interest in this matter and in the enforcement of the antitrust laws.

Sincerely yours,

Mary Jean Moltenbrey,

Chief, Civil Task Force.

[FR Doc. 96–12775 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 2, 1996, and published in the Federal Register on February 13, 1996, (61 FR 5570), Ansys Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Heroin (9200)	I
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Levorphanol (9220)	II

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Ansys Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–12971 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated March 27, 1996, and published in the Federal Register on April 4, 1996, (61 FR 15119), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 16, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–12972 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

[DEA No. 150P]

Controlled Substances: Notice of Proposed 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed revised aggregate production quotas for 1996.

SUMMARY: This notice proposes revised 1996 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: Comments or objections should be received on or before June 24, 1996.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA by section 0.104 of Title 28 of the Code of Federal Regulations.

On November 21, 1995, a notice of the 1996 established aggregate production quotas was published in the Federal Register (60 FR 57808). The notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1996 as provided for in Title 21, Code of Federal Regulations, Section 1303.23(c). Subsequently, the DEA revised 1996 aggregate production quotas for amobarbital, heroin and hydromorphone as published in the Federal Register (61 FR 19090 and 61 FR 14336). Those revised figures are included with the proposed 1996 revised aggregate production quotas below. These proposed aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1996 and do not include amounts which may be imported for use in industrial processes.

The proposed revisions are based on a review of 1995 year-end inventories, 1995 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator by Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator of the DEA hereby proposes the following 1996 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

Basic class	Previously established 1996 aggregate production quotas	Proposed revised 1996 aggregate production quotas
Schedule I:		
Acetylmethadol	7	7
Alphacetylmethadol	7	7
Aminorex	7	7
Cathinone	9	9
Difenoxin	14,000	14,000
Dihydromorphine	7	7
2, 5-Dimethoxyamphetamine	10,650,000	10,650,000
Dimethylamphetamine	7	7
Ethylamine analog of Phencyclidine	5	5
N-Ethylamphetamine	7	7
Heroin	5	5
Lysergic acid diethylamide	58	58
Mescaline	7	7
Methaqualone	17	17
Methcathinone	9	9
4-Methoxyamphetamine	17	17
4-Methylaminorex	2	2
3,4-Methylenedioxyamphetamine	17	17
3,4-Methylenedioxy-N-ethylamphetamine	27	27
3,4-Methylenedioxymethamphetamine	42	42
3-Methylfentanyl	14	14
Normethadone	7	7
Normorphine	7	7
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	55,100	55,100
Schedule II:		
Alfentanil	8,500	8,500
Amobarbital	301,000	301,000
Amphetamine	1,863,200	2,280,000
Cocaine	550,040	550,040
Codeine (for sale)	58,395,000	47,000,000
Codeine (for conversion)	16,632,000	17,519,000
Desoxyephedrine	1,044,000	1,044,000
(1,000,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product and 44,000 grams for methamphetamine)		
Dextropropoxyphene	118,066,000	118,066,000
Dihydrocodeine	116,000	214,000
Diphenoxylate	1,063,000	1,002,000
Ecgonine (for conversion)	650,100	650,100
Ethylmorphine	12	12
Fentanyl	120,100	143,000
Hydrocodone (for sale)	10,575,000	12,145,000
Hydrocodone (for conversion)	2,800,000	2,800,000
Hydromorphone	718,000	718,000
Isomethadone	12	12
Levo-alpha-acetylmethadol	200,000	200,000
Levorphanol	14,300	14,300
Meperidine	10,822,000	10,822,000
Methadone	4,551,000	4,551,000
Methadone (for conv)	364,000	364,000
Methadone Int. (for conv)	5,534,000	5,534,000
Methamphetamine (for conv)	723,000	723,000
Methylphenidate	10,291,000	11,090,000
Morphine (for sale)	12,450,000	12,450,000
Morphine (for conv)	76,735,000	76,735,000
Noroxymorphone (for sale)	2,000	2,000
Noroxymorphone (for conv)	3,400,000	3,400,000
Opium	1,226,000	714,000
Oxycodone (for sale)	5,571,000	5,571,000
Oxycodone (for conv)	37,300	37,300
Oxymorphone	11,200	11,200
Pentobarbital	15,100,000	15,100,000
Phencyclidine	40	40
Phenylacetone (for conv)	5,280,000	10
1-Phenylcyclohexylamine	10	10

Basic class	Previously established 1996 aggregate production quotas	Proposed revised 1996 aggregate production quotas
1-Piperidinocyclohexanecarbonitrile	12	12
Secobarbital	400,000	400,000
Sufentanil	1,000	1,000
Thebaine	9,217,000	9,387,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notice of aggregate production quotas are not subject to centralized review under Executive Order 12866.

Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 15, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–12899 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

Foreign Claims Settlement Commission

Registration of Potential Claims Against Iraq

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice.

SUMMARY: The Foreign Claims Settlement Commission announces the establishment of an Iraq Claims Registration Program for registration of potential claims of United States nationals (individuals U.S. citizens, corporations and other legal entities) against the Government of Iraq.

DATES: The deadline for registration of claims is June 28, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, N.W., Suite 6002, Washington, DC 20579. Tel. (202) 616–6975; FAX (202) 616–6993.

Notice of Commencement of Claims Registration Program, and of Program Completion Date

This year marks the fifth anniversary of the Persian Gulf War. As a result of that conflict and related events, thousands of United States nationals (individual U.S. citizens, corporations and other legal entities) suffered injuries, losses and damages. Many claims arising directly out of Iraq's invasion and occupation of Kuwait are being heard by the United States Compensation Commission (''UNCC'') in Geneva. However, at present there is no viable forum for the estimated $5 billion in outstanding claims against Iraq which fall outside the UNCC's jurisdiction (''non-UNCCC claims'').

The Foreign Claims Settlement Commission of the United States (FCSC), an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program for United States nationals (private citizens, corporations, and other legal entities) to register these non-UNCC claims against the Government of Iraq for breach of contract, loss of and damage to property, physical injury or illness, and other losses and damages.

Claims to be registered in this program are claims against the Government of Iraq (and its subdivisions and controlled entities) that are not within the UNCC's jurisdiction. The UNCC's jurisdiction is defined by relevant United Nations Security Council resolutions (particularly 687 and 692) and the decisions of the UNCC Governing Council.

The claims covered by this Registration Program include: (1) All claims which arose prior to Iraq's August 2, 1990, invasion of Kuwait; (2) all claims of U.S. military personnel or their survivors which arose out of Desert Shield and Desert Storm (other than claims for inhumane treatment of prisoners of war, which are compensable by the UNCC); and (3) all claims arising out of Iraq's 1987 attack on the U.S.S. Stark (other than wrongful death claims, which have been compensated by Iraq).

The information collected in the FCSC Iraq Claims Registration Program will be used to compile an accurate and comprehensive Registry of claimants and claims against Iraq, in preparation for the adjudication of those claims upon enactment of authorizing legislation. If such legislation is not enacted, the information will be used to ensure that all claims are taken into account in connection with any future claims settlement negotiations with Iraq.

This Claims Registration Program will update and supplement the information on such claims compiled by the Treasury Department in 1991. (56 FR 5636, Feb. 11, 1991) Potential claimants who registered previously with the Treasury Department should also file in this new Registration Program.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Iraq Claims Registration, Washington, DC 20579.

Forms also may be requested in person at the offices of the Foreign Claims Settlement Commission, 600 E

Street, Northwest, Suite 6002, Washington, DC, or by telephone at 202–616–6975 or fax at 202–616–6993.

The deadline for filing a Registration Form is June 28, 1996.

Note: The registration of a claim in this program will *not* constitute the filing of a formal claim against Iraq. In the event legislation is passed authorizing the Commission to adjudicate these claims against Iraq, instructions for the formal filing of claims will be forwarded to all those registered in this Iraq Claims Registration Program.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0067.

David E. Bradley,

Chief Counsel.

[FR Doc. 96–13088 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Public Hearings

This document is a notice of public hearings to be held by the Department of Labor for the purpose of gathering information regarding the use of abusive or exploitative child labor in the production of goods imported into the United States. The hearing will be held on Friday, June 28, 1996, at the Department of Labor, room N–3437, beginning at 9 a.m. The hearing will be open to the public. The Department of Labor is now accepting requests from all interested parties to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Parties interested in testifying at the international child labor hearing should call (202) 219–7867 to be put on the roster.

The Department of Labor is currently undertaking a third Congressionally-mandated review of international child labor practices (pursuant to the 1996 Omnibus Appropriations Act, P.L. 104–134). Information provided at the hearing will be considered by the Department of Labor in preparing its report to Congress. Testimony should be confined to the specific topic of the study.

Specifically, the international child labor study of the Bureau of International Labor Affairs is seeking written and oral testimony on the topics noted below:

1. Efforts of U.S. companies and nongovernmental agencies aimed at eliminating the use of abusive and exploitative child labor in the production of goods imported into the United States. Such efforts could include, but are not limited to, labeling, consumer information campaigns, codes of conduct, guidelines for subcontractors, and the establishment of educational facilities.

2. Codes of conduct in the garment industry. We are required to identify the top 20 U.S. garment importers, their subsidiaries, contractors, and their subcontractors' codes of conduct regarding the use of abusive and exploitative child labor in the production of goods imported to the United States. We are seeking information about the nature, adequacy and effectiveness of any such codes of conduct.

3. The necessary components of an effective code of conduct and its enforcement.

4. International and U.S. laws that might be used to encourage the elimination of child labor exploitation, including in the production of items imported into the United States, and any appropriate changes to such laws.

5. Items that are likely to be produced with abusive and exploitative child labor and imported into the United States.

DATES: The hearing is scheduled for Friday, June 28, 1996. The deadline for being placed on the roster for oral testimony is 5 p.m., June 21, 1996. Presenters will be required to submit five (5) written copies of their oral testimony to the Child Labor Study office by 5 p.m., June 26. The record will be kept open for additional written testimony until 5 p.m., July 5, 1996.

ADDRESSES: Written testimony should be addressed to the International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, fax: (202) 219–4923.

FOR FURTHER INFORMATION CONTACT: Teresa Estrada-Berg, International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 219–7867; fax (202) 219–5980. Persons with disabilities who need special accommodations should contact Ms. Estrada-Berg by June 17, 1996.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC this 15th day of May, 1996.

Andrew J. Samet,

Associate Deputy Under Secretary.

[FR Doc. 96–13013 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Disaster Unemployment Assistance (DUA), Program Operating Forms

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed one year extension of previous approval by OMB of the attached DUA Program Operating Forms (ETA 81, ETA 81A, ETA 82, ETA 83 and ETA 84). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 22, 1996.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone number (202) 219–7831 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–707 (Sections 410 and 423) provide for benefit assistance to ''any individual unemployed as a result of a major disaster.'' SESA's, through agreements between the States and the Secretary of Labor, act as agents of the Secretary for the purpose of providing assistance to applicants in the various States who are unemployed as a result of a major disaster. The forms in Chapters III through VII of the Disaster Unemployment Assistance Handbook are used in connection with the provision of this benefit assistance. (Previously cleared for use thru OMB by ETA under OMB No. 1205–0051.)

Form ETA 81 is an application form which is required to be completed by every applicant for Disaster Unemployment Assistance (DUA); DUA Form ETA 81A is a supplemental form to be completed by self-employed (or self employed prior to the disaster) applicants only; Form ETA 82 is used by the State agency in making a determination of each applicant's entitlement to DUA and to notify the applicant of the determination; Section A of Form ETA 83 is completed by the applicant each time (weekly or bi-weekly) he/she continues to request assistance to ensure continued entitlement, and Section B is completed by the State agency to notify the applicant of his/her current eligibility status; and Form ETA 84 is used by the State agency to notify overdrawn participants in the DUA program of the weeks and the cause of overpayment. These forms are prescribed by the Secretary under 20 CFR 625.8 and 625.9 and are all necessary to the operation of the program.

II. Current Actions

The forms (described above) are used by SESA's in operating the program and are not reports per se. The continuation of this existing use of these forms by SESA's is essential to the operation of the DUA program. Because time is of the essence in making benefit payments due as a result of a major disaster, application data relating to the disaster are requested by State agencies through a number of appropriate forms. As previously indicated, if data were requested less frequently, determinations as to eligibility would be much more erratic, and the overall monitoring of the program as required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, in order to insure adequate administration—yet expeditious administration—would be greatly impaired. Effective accounting of disaster unemployment assistance benefits and other emergency expenditures would also be hampered.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Disaster Unemployment Assistance (DUA) Program Operating Forms.

OMB Number: 1205–0051.

Agency Number(s): ETA 81, ETA 81A, ETA 82, ETA 83, and ETA 84.

Affected Public: Individuals/State Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden in hours
ETA 81	11,000	Annually	11,000	⅓	3,666
ETA 81A	3,800	Annually	3,800	¼	950
ETA 82	11,000	Annually	11,000	¼	2,750
ETA 83	11,000	Annually	66,000	¼	16,500
ETA 84	235	Annually	235	½	117
Totals	11,000		92,035		23,983

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $148,922.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 15, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service, Employment and Training Administration.

[FR Doc. 96–13008 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–09990, et al.

Proposed Exemptions; Blue Cross and Blue Shield of Virginia

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state

the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Blue Cross and Blue Shield of Virginia (the Company), Located in Richmond, VA

[Application No. D–09990]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed receipt of cash and/or common stock (the Stock) of Trigon Healthcare, Inc. (Trigon), the Company's sole owner, by any employee benefit plan policyholder of the Company (the Plan), other than an employee benefit plan sponsored by the Company or its affiliates, in exchange for such policyholder's membership interest in the Company, in accordance with the terms of a plan of reorganization (the Demutualization; the Demutualization Plan) adopted by the Company and implemented pursuant to the insurance laws of the State of Virginia.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Demutalization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Virginia law and is subject to the review and supervision by the Virginia State Corporation Commission (the Commission).

(b) The Commission reviews the terms of the options that are provided to certain policyholders of the Company (the Eligible Members), as part of such Commission's review of the Demutualization Plan, and the Commission only approves the Demutualization Plan following a determination that such Demutualization Plan is fair and equitable to all Eligible Members.

(c) Each Eligible Member has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such Eligible Member by the Company, of the terms of the Demutualization Plan.

(d) Any election by an Eligible Member to receive cash and/or Trigon Stock pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither the Company nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After an Eligible Member entitled to receive stock is allocated at least 16 shares of Trigon Stock for each vote, additional consideration is allocated to an Eligible Member who owns a participating policy based on actuarial formulas that take into account each participating policy's contribution to the equity (the Equity Contribution) of the Company which formulas have been approved by the Commission.

(f) All Eligible Members participate in the transactions on the same basis within their class groupings as other Eligible Members that are not Plans.

(g) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Trigon Stock or in connection with the implementation of the commission-free sales program.

(h) All of the Company's policyholder obligations remain in force and are not affected by the Demutualization Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Company'' means Blue Cross and Blue Shield of Virginia and any affiliate of the Company as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of the Company includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Effective Date'' means the date on which the certificate of merger is issued by the Commission and the Demutualization occurs.

(d) The term ''Eligible Member'' means a member which will receive a distribution of Trigon Stock in the Demutualization. A ''Member'' is a policyholder which has a policy of insurance directly from the Company, which policy entitles the policyholder to vote. To be eligible for a distribution of Trigon Stock, the Member must have had a policy in effect on May 31, 1995, on the Effective Date, and at all times between those dates.

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(e) The term ''Record Date'' is the date on which the determination of an Eligible Member's status for voting on the Demutualization is made.

Summary of Facts and Representations

1. The Company is a mutual insurance corporation organized under the laws and regulations of the Commonwealth of Virginia. It is a member of the national organization, Blue Cross and Blue Shield Association (Blue Cross and Blue Shield). Blue Cross and Blue Shield, as part of its efforts to promote the Blue Cross and Blue Shield name, licenses to each member, the exclusive right to use the Blue Cross and Blue Shield service marks within restricted geographic areas. Except for a small part of Northern Virginia, Blue Cross and Blue Shield is the exclusive licensee of the Blue Cross and Blue Shield service marks in Virginia. The Company maintains its headquarters in Richmond, Virginia.

The Company is obligated to make basic health insurance available to all individuals in its service areas through a system of open enrollment. On December 31, 1994, the Company had total assets in excess of $1 billion. The Company's main sources of income are the sale of health insurance policies to employee benefit plans, employers and individuals (the Members) and the generation of investment income. As of March 30, 1995, the Company had approximately 20,000 policies in force and 725,000 Members which were Plans covered by the Act.

As a mutual health care insurance company, the Company's policyholders have certain rights as Members. These rights, which are referred to as membership interests, include the right to vote on matters submitted to a vote of the Members.

2. The Company represents that it has been successful in offering health care insurance to its Members at affordable rates. However, it notes that there has been an increase in the level of competition. To maintain its position in the industry, the Company believes that it must expand and, in so doing, it will require an infusion of funds. As a mutual insurance company, the Company states that it is precluded from obtaining funds from the capital markets. Therefore, the Company proposes to convert from a mutual insurance company to a stock insurance company because it believes that demutualization is the most effective means of accessing the capital markets. The Company also believes that access to the capital markets will enhance its ability to grow, remain competitive and provide essential insurance to its Members.

In addition, the Company represents that its Members would derive benefits from the Demutualization. One of these benefits is that Members would receive cash and/or shares of Trigon Stock which would be publicly-traded. The Company represents that the Demutualization would not have any effect on the rights of the Members as insureds. In this regard, all policies in effect before the Demutualization would remain in force after the Demutualization.

Accordingly, on June 20, 1995, the Board of Directors of the Company formally decided to proceed with the Demutualization by authorizing the filing of the Demutualization Plan with the Virginia State Corporation Commission. The actual filing of the Demutualization Plan with the Commission occurred on June 27, 1995. The actual procedures that will be followed in implementing the Demutualization Plan are described below.

3. Under Virginia law, insurance companies are primarily regulated by the Bureau of Insurance (the BOI) which is part of the Commission. The Commission is charged with the duty to ensure that licensed insurance companies comply with the requirements of law under its jurisdiction. The Commission will conduct an extensive review and analysis of the Demutualization Plan and make required findings under Virginia law before the Demutualization can be accomplished. In this regard, the Demutualization must comply with four provisions in the Virginia statutes which relate to—

(a) The Conversion from a Mutual Insurance Company to a Stock Company. According to Va. Stat. § 38.2–1005.1, a mutual insurance company may convert to a stock insurer under a plan of conversion approved by the Commission. In addition, the Commission shall approve the plan of conversion if it determines that the following conditions are met:

> (1) The terms and conditions of the plan are fair and equitable to the policyholders of the issuer; (2) the plan is approved by more than two-thirds of the votes cast at a meeting of the members of the insurer at which a quorum is present; (3) the entire stock ownership interests or other consideration is distributed to policyholders, except as expressly otherwise provided; (4) for a mutual insurer that converted from a health services plan in existence prior to December 31, 1987, the Virginia State Treasurer is allocated stock or cash equal to the surplus on December 31, 1987 plus ten million dollars (Virginia may also be entitled to stock or cash as a policyholder. This condition will apply to Trigon.); and (5) immediately after the conversion, the insurer will have the required amounts of fully paid capital stock and surplus.

(b) A Change in Control as Part of the Demutualization. Contemporaneous with the Demutualization, there will be an acquisition of control of the Company through the creation of a holding company. Va. Stat. § 38.2–1323A provides that—

> No person shall acquire or attempt to acquire, through merger or otherwise, control of any domestic insurer, or any person controlling a domestic insurer, unless the person has previously filed with the Commission and has sent to the insurer an application for approval of acquisition of control of the insurer, and the Commission has issued an order approving the application.

The Commission's standard of review for an acquisition of control of an insurance company is set forth in Va. Stat. § 38.2–1326. These provisions require the Commission to review the following issues and deny the application if the Commission makes any of the following findings: (1) after the change of control, the insurer would not satisfy the requirements for the issuance of a license; (2) the acquisition of control would lessen competition substantially or tend to create a monopoly in insurance in Virginia; (3) the financial condition of the acquiring person might jeopardize the financial stability of the insurer, or prejudice the interest of the policyholders; (4) any plans or proposals of the acquiring party to make any material change in the company's business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest; (5) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the acquisition of control; or (6) after the change of control, the insurer's surplus to policyholders would not be reasonable in relation to its outstanding liabilities and adequate to its financial needs.

(c) The Treatment of the Demutualization as a Material Transaction. The Commission must approve the Demutualization as a ''material transaction'' as defined in the Va. Stat. § 38.2–1322. The Commission, in reviewing any material transaction, will consider whether the material transaction complies with the standards set forth below and whether it may adversely affect the interest of

policyholders. (Va. Stat. § 38.2–1331C). These standards are that: (1) the terms of the transaction are fair and reasonable to the companies; (2) charges of fees for services performed will be reasonable; (3) expenses incurred and payments received will be allocated to the insurer in conformity with customary insurance accounting practices consistently applied; (4) the books, accounts and records of each party shall disclose clearly and accurately the precise nature and details of the transactions; and (5) the insurer's surplus to policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

4. Although the Company has finalized the Demutualization Plan, it still must be approved by the Commission and the Company's Members. The Commission will conduct a public hearing on the Demutualization Plan. Interested Members and other parties will be given an opportunity to present their views about the Demutualization Plan. The Commission will then make a finding as to the approval or disapproval of the Demutualization Plan. At present, the dates for the hearing and the special Member meeting have not been established.

5. For purposes of approving the Demutualization Plan, a Member who is the owner of the policy is entitled to vote. In general, the owner of an individual insurance policy is the person specified in the policy or contract as the owner or contract holder. The owner of a group policy of insurance is the person or persons specified in the group policy as the holder (usually the employer who has entered into the group policy to provide for health care insurance for its employees).

Members will vote on the Demutualization Plan at a special meeting. On matters submitted to a vote of the Members, the number of votes that a Member has depends on the type of policy. Each Member who has an individual group policy of insurance is entitled to as many votes as there are employees or other persons primarily insured under the policy. To be approved, the Demutualization Plan must receive two-thirds of the votes that are cast at the meeting in person or by proxy.

Notice of the special meeting to vote on the Demutualization Plan will be provided to Members with health insurance policies in force on the Record Date. In addition to receiving advance notice of the special meeting, Members will receive a comprehensive informational packet about the Demutualization. The contents of the informational packet will be reviewed by the BOI.

6. In conjunction with receiving required approvals from the Members and the Commission, the Company contemplates that several corporate transactions have or will occur. In this regard, the Company has formed Trigon as a Virginia stock corporation and a wholly owned subsidiary of the Company. In addition, the Company has formed Trigon Merger Sub, Inc. (TMSI) as a wholly owned subsidiary of Trigon. The final step in the Demutualization process is for the Commission to issue a certificate of merger to effectuate the corporate merger needed to complete the conversion. The date on which the Commission issues the certificate of merger will be the Effective Date.

7. On the Effective Date, the following events will occur simultaneously under the Demutualization Plan:

(a) Merger of TMSI into the Company. TMSI will merge into the Company and the Company will be the survivor. As a result, the Company will become a wholly owned subsidiary of Trigon.

(b) Change of the Company's Name. The Company will then change its name to ''Trigon Insurance Company'' and become a Virginia stock corporation when its Restated Articles of Incorporation and New Bylaws are adopted by operation of the Demutualization Plan.

(c) Cancellation of Membership Interests in the Company. In accordance with the Demutualization Plan, all membership interests which Members had in the Company will be cancelled and converted into common stock of Trigon and/or cash for all Eligible Members. In addition, all issued and outstanding shares of capital stock which the Company owned in Trigon will be cancelled.

The Demutualization Plan provides that all elections by Eligible Members which are Plans to receive cash and/or shares of Trigon Stock will be made by Independent Fiduciaries. Neither the Company nor any of its affiliates will exercise any discretion nor provide investment advice with respect to such elections by the Independent Fiduciaries. In addition, no Eligible Members will be required to pay any brokerage fees or commissions in connection with the receipt of Trigon Stock.[2]

(d) The Initial Public Offering (the IPO). The Company will conduct an IPO of the shares of Trigon Stock. The Demutualization Plan provides that the maximum size of the IPO will be such that 49 percent of the Trigon Stock outstanding after the IPO will have been issued in the IPO.[3]

8. The Company has hired the international accounting firm of KPMG Peat Marwick to prepare the actuarial calculations for the Demutualization Plan. The purpose of the actuarial calculations is to provide a reasonable and fair allocation of the Trigon Stock to the Eligible Members. The Company has been working with its actuaries to formulate the allocation methodology for the Demutualization Plan. The Members and the Commission will have to approve the final allocation among the Members.

The allocation of the Trigon Stock will be based on two components—voting rights (Voting Rights) and the Equity Contribution by the policies. Under the proposed Demutualization Plan, 15 percent of the Trigon Stock will be allocated based on the Voting Rights of the Members.[4] This portion of the Trigon Stock will be allocated based on the proportion of each Eligible Member's vote or votes compared to the total votes. It is anticipated that there will be 743,300 votes. Based on an allocation of 9,600,000 shares for Voting Rights, it is currently anticipated that

[2] The Company represents that an insurance policy that provides benefits under an employee benefit plan typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the policyholder. With respect to insurance policies that designate the employer or trustee as policyholder, the Company asserts that, as required under the Demutualization Plan, the Company will make distributions to the employer or trustee with one exception. Where a group policy has been issued to the Company providing coverage for its own employees under a welfare benefit plan, the company will ensure that the distribution is made to an independent fiduciary acting on behalf of the Company's plan or will be distributed directly to participants.

In general, it is the Department's view that, if an insurance policy is purchased with assets of an employee benefit plan, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when the Company incurs the obligation to distribute Trigon Stock, then such consideration would constitute an asset of the plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[3] The Company projects that there will be a total of 64 million shares of Trigon Stock available for distribution to Eligible Members as part of the Demutualization. However, the Company notes that exact number of shares offered may be subject to further adjustment.

[4] The right to vote on the proposal to approve the Demutualization Plan is based on a voting Member's status on the Record Date for the special meeting. Voting Members are those Members holding an individual or group policy issued by the Company which is in force on the Record Date. To date, the Record Date has not been established.

each Eligible Member will receive 16 shares for each vote.

The remaining 85 percent of the Trigon Stock will be allocated based on the Equity Contribution of the policies. In this regard, the Demutualization Plan assigns each policy to a strategic business unit (SBU) (e.g., Major Accounts, Regional Business, etc.) and a major product line (MPL) under that SBU (e.g., Partially Self-Insured, Experience Rated, etc.). The Demutualization Plan divides the Eligible Members into 4 SBUs and 11 MPLs that could receive an allocation of Trigon Stock. In this regard, all Eligible Members will be treated the same within their class groupings.

9. The Company has provided a hypothetical example to illustrate the manner in which shares of Trigon Stock would be calculated for an Eligible Member. The Company notes that the example does not take into consideration such factors as the actual experience of an Eligible Member, the MPL or the total experience of the Company. The example is presented as follows:

Assume that an Eligible Member's group policy was in force from 1985 until 1995. Thus, the first step in the allocation methodology is to compute the Voting Rights allocation. The second step in the allocation methodology is to determine the Equity Contribution allocation.

Voting Rights Allocation. Assume that the policy has a total of 30 votes as of the Record Date. At a rate of 16 shares per vote, the Voting Rights allocation would be 480 shares of Trigon Stock.

30 votes × 16 shares of Trigon Stock = 480 shares of Trigon Stock

Equity Contribution Allocation. The following table represents the number of covered lives and the Equity Contribution Factor (the ECF)[5] derived for the Eligible Member's MPL for each year.

Period	Covered lives		ECF	Equity contribution
Pre-1989	22	×	$50	$1,100
1989	22	×	60	1,320
1990	30	×	60	1,800
1991	28	×	40	1,120
1992	35	×	70	2,450
1993	35	×	60	2,100
1994	40	×	80	3,200
Future	40	×	60	2,400
Total Equity Contribution				$15,490

[5] The ECF is determined by dividing the Equity Contribution of the MPL by the total number of covered lives. For example, assume that in 1989, an MPL had an Equity Contribution of $10 million and 50,000 covered lives. The 1989 ECF for that MPL would be $200 (i.e., $10 million divided by 50,000).

Assume that the total Equity Contribution for all Eligible Members is 500,000,000 and the total number of shares of Trigon Stock to be allocated for Equity Contributions is 50,000,000. The Eligible Member's allocation of Equity Contribution Shares would be 1,549 and is calculated as follows:

$15,490/$500,000,000 × 50,000,000 shares = 1,549 Equity Contribution Shares.

The total number of shares of Trigon Stock that will be received by the Eligible Member is the sum of the Voting Rights Shares and the Equity Contribution Shares.

480 + 1549 = 2,029 Total Shares Received.

10. It is represented that the Company is a party in interest with respect to many Plans affected by the Demutualization because the Company provides a variety of services to Plans, some of which may constitute fiduciary services. In this regard, it is represented that a substantial portion of the policies in certain of the Company's SBUs are part of employee welfare benefit plans or employee pension benefit plans. Therefore, the Company requests an administrative exemption from the Department that would cover the receipt of cash and/or Trigon Stock by Eligible Members with respect to their membership interest in the Company as it existed in the form of a mutual insurance company.

11. As stated above, the form of distribution that will be made by the Company to Eligible Members is currently intended to be cash and/or shares of Trigon Stock in exchange for such Members' membership interests in the Company. The cash or stock will be paid to Eligible Members as soon as possible after the Effective Date. The form of payment and all other procedures with respect to the Demutualization will be the same for Plans as for other Members. The Company currently estimates that approximately 70 percent of the Trigon Stock will be distributed to Plans which participate with other Eligible Members in many of the SBUs.[6]

[6] The applicant represents that there is no alternative available if an Eligible Member decides not to participate in the Demutualization since it is governed by Virginia law. However, as discussed in Representation 7, there are several opportunities for an Eligible Member to receive cash instead of shares of Trigon Stock under the Demutualization Plan.

In addition, as noted in Representation 13, at the end of each Lockup Period, shares of Trigon Stock will be automatically distributed to Eligible Members. If the Eligible Member cannot be located, the stock will be returned to the Trigon transfer agent and held for the benefit of the Eligible Member. Assuming however the Eligible Member refuses to accept the Trigon Stock when it is distributed at the end of the Lockup Period, the applicant represents that it will continue to be held in the Eligible Member's name, possibly until the shares become abandoned property under Virginia escheat laws.

Although the Demutualization Plan provides that all Eligible Members may elect to receive their consideration in cash rather than in Trigon Stock, it is possible that certain Eligible Members will receive both forms of consideration. Certain Eligible Members, referred to as ''Mandatory Cash Members,'' will receive cash in lieu of Trigon Stock once the value of such stock can be established.[7] Trigon Stock allocated to this class of Eligible Members is termed ''Mandatory Cash Shares.''

Other Eligible Members may also be provided with cash instead of Trigon Stock or, with a combination of both. Eligible Members in this category who elect to receive cash are called ''Preferred Cash Members''[8] and the Trigon Stock otherwise allocable to them is termed ''Preferred Cash Shares.'' To the extent that cash is less than the full consideration payable to the Eligible Member, shares of Trigon Stock will also be issued to such Eligible Member as the remaining consideration.

The amount of cash which a Mandatory Cash Member or a Preferred Cash Member will receive in lieu of Trigon Stock will equal the number of shares of Trigon Stock multiplied by the initial stock price (the ISP). The ISP means the proceeds per share of Trigon Stock obtained by Trigon from the sale of Trigon Stock to the public in the IPO minus all underwriting discounts, costs and expenses incurred in connection with the IPO, divided by the number of shares of Trigon Stock sold in the IPO.

On or immediately preceding the Effective Date, Trigon will determine the amount of cash available to pay all Eligible Members who are required or permitted to receive cash. If the amount of cash is insufficient to pay all of the Mandatory Cash Members and all of the Preferred Cash Members, then the cash available will be allocated in the following manner: First, the cash will be used to pay all Mandatory Cash Members. Second, any remaining cash

[7] The criteria for being a Mandatory Cash Member are the same for all Eligible Members. The classification of a Mandatory Cash Member is (a) an Eligible Member whom the Company knows is subject to a lien or bankruptcy proceeding or whose consideration for the shares will be subject to a lien or bankruptcy proceeding; (b) an Eligible Member with a mailing address outside the District of Columbia or any State of the United States of America; or (c) an Eligible Member with a mailing address within a state in which there are fewer than 10 Eligible Members and the total stock allocated to such Eligible Members is less than 2,000 shares, if the Company determines that the issuance of shares to these Eligible Members would result in unreasonable delay or excessive hardship or delay.

[8] A Preferred Cash Member is simply an Eligible Member, other than a Mandatory Cash Member, who has affirmatively elected, on a form that has been furnished and returned to the Company, to receive cash in lieu of Trigon Stock.

will be used to pay all Preferred Cash Members who are Odd Lot Holders.[9] If the cash is insufficient to pay all Odd Lot Holders in full, the cash available will be divided among the Odd Lot Holders *pro rata* based on the total number of shares allocated to each Odd Lot Holder. Third, any remaining cash will be used to pay all Preferred Cash Members who are not Odd Lot Holders. If the cash remaining is insufficient, the cash available will be divided among the Preferred Cash Members *pro rata* based on the total number of shares allocated to each non- Odd Lot Member. Then, the remaining amount that is not paid in cash will be distributed in the form of Trigon Stock.

12. After Demutualization, the Company will become a wholly owned subsidiary of Trigon. Persons holding policies of insurance issued by the Company will cease to be Members of the Company and will become stockholders of Trigon. As stated above, this change will not affect the rights and privileges of the Members in their insurance contracts. All policies in effect before the Demutualization will continue in force after the Demutualization. All Members will continue to receive health care insurance through Trigon.

Trigon will seek a listing for Trigon Stock on a major national stock exchange. The majority of the stockholders of Trigon will consist of Eligible Members who received shares of stock in Trigon in the Demutualization.

13. To protect the interest of all Eligible Members and to ensure the orderly trading and value of Trigon Stock after the IPO, the Demutualization Plan includes limitations on the sales of such stock issued to Eligible Members in the form of a Lockup. All shares of Trigon Stock that are issued to Eligible Members will be subject to the Lockup during two Lockup Periods. During each Lockup Period, Trigon Stock issued to an Eligible Member will be registered in uncertificated form on the books of Trigon as beneficially owned by the Eligible Member. A Trigon transfer agent will have computerized records that will show the amount of Trigon Stock, if any, that is available for each Eligible Member. Although the Eligible Member will not have physical custody of the Trigon Stock certificate, at all times during the Lockup Period, the Eligible Member will have the right to vote the shares and be entitled to receive all dividends or any other distributions relating to the Trigon Stock issued to such Eligible Member.

As soon as practicable after the expiration of each Lockup Period, a certificate for Trigon Stock will be issued to Eligible Members or their permitted transferors. Eligible Members who are Odd Lot Holders may request a certificate from Trigon's transfer agent.

The first Lockup Period will end on the six month anniversary date of the Effective Date. Upon the termination of the first Lockup Period, one-half of the Trigon Stock will be freely-tradeable by Eligible Members and may be disposed of on a stock exchange at the public market price or in any manner that the Eligible Member wishes, subject to applicable securities laws.[10] The second Lockup Period will terminate on the twelve month anniversary of the Effective Date. At that time, the remaining one-half of Trigon Stock issued to Eligible Members will again be freely-tradeable.[11]

14. Prior to the ending of the first Lockup Period, Trigon will establish a commission-free sales and round-up program for small holders of Trigon Stock (the Small Holders Program). The purpose of the Small Holders Program is to allow certain Eligible Members either to sell all of their shares of Trigon Stock or to purchase sufficient shares of Trigon Stock that will enable such Eligible Members to round-up their holdings to 100 shares of Trigon Stock. The Small Holders Program will continue for 90 days unless otherwise extended.

Trigon will determine the maximum number of shares (not to exceed 99) that will entitle an Eligible Member to participate in the Small Holders Program. All purchases and sales under the Small Holders Program will be at prevailing market prices and free of brokerage commissions or other administrative or similar expenses.

15. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Demutualization Plan will be implemented in accordance with procedural and substantive safeguards that are imposed under Virginia law and will be subject to the review and supervision by the Commission.

(b) The Commission will review the terms of the options that are provided to Eligible Members of the Company as part of such Commission's review of the Demutualization Plan, and will approve the Demutualization Plan following a determination that such Demutualization Plan is fair and equitable to all Eligible Members.

(c) Each Eligible Member will have an opportunity to comment orally or in writing on the Demutualization Plan and decide whether to vote to approve in writing such Demutualization Plan after full written disclosure is given such policyholder by the Company, of the terms of the Demutualization Plan.

(d) Any election by an Eligible Member which is a Plan to receive shares of Trigon Stock pursuant to the terms of the Demutualization Plan will be made by one or more Independent Fiduciaries of such Plan and neither the Company nor any of its affiliates will exercise any discretion or provides investment advice with respect to such election.

(e) After each Eligible Member is allocated at least 16 shares of Trigon Stock, additional consideration allocated to Eligible Members who own participating policies will be based on actuarial formulas that take into account each participating policy's contribution to the surplus of the Company which formulas have been approved by the Director.

(f) All Plans that are Eligible Members will participate in the transactions on the same basis within their class groupings as other Eligible Members that are not Plans.

(g) No Eligible Member will pay any brokerage commissions or fees in connection with such Eligible Member's receipt of Trigon Stock or in connection with the implementation of the commission-free sales program.

(h) All of the Company's policyholder obligations will remain in force and will not be affected by the Demutualization Plan.

Notice to Interested Persons

The Company will provide notice of the proposed exemption to all Eligible Members which are Plans within 35 days of the publication of the notice of pendency in the Federal Register. Such

[9] An Odd Lot Holder is an Eligible Member who will receive more than 0 and less than 100 shares of Trigon Stock.

[10] It should be noted that there is no provision in the Demutualization Plan requiring Trigon to purchase any of the shares of Trigon Stock from an Eligible Member at the end of a Lockup Period.

[11] In general, Trigon will not recognize most sales, pledges or other transfers by any Eligible Member of any rights or interest in the Trigon Stock or other distributions subject to the Lockup. Because of special circumstances, however, the Demutualization Plan will permit certain limited transfers. One of these special circumstances will allow an Eligible Member to transfer Trigon Stock to a trust created under a Plan. After the transfer to the trust, the Trigon Stock would continue to be subject to the same Lockup restrictions as described above.

Notwithstanding the foregoing, the Department notes, however, that the applicant has not requested, nor is the Department providing, exemptive relief with respect to the transfer of Trigon Stock by an Eligible Member to a Plan to the extent that the transaction violates the provisions of section 406 of the Act.

notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the Federal Register as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 65 days after the date of publication of this exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Smith Barney, Located in New York, New York

[Application No. D–10126]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities, under certain ''exclusive borrowing'' arrangements, to Smith Barney, and to any affiliate of Smith Barney who is a U.S. registered broker-dealer or a government securities broker or dealer (Affiliates; collectively Smith Barney), by employee benefit plans (Plans) with respect to which Smith Barney is a party in interest, provided that the following conditions are satisfied:

(a) For each Plan, neither Smith Barney nor its Affiliates has discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(b) Smith Barney directly negotiates an exclusive borrowing agreement (Borrowing Agreement) with a Plan fiduciary which is independent of Smith Barney;

(c) In exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan either (i) Receives a reasonable fee, which is specified in the Borrowing Agreement for each category of securities available for loan and is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) has the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney;

(d) Any change in the rate that Smith Barney pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary, except that consent is presumed where the rate changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) On or before the day the loaned securities are delivered, the Plan receives from Smith Barney (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit issued by persons other than Smith Barney or its Affiliates, or other collateral permitted under PTCE 81–6, as it may be amended or superseded; [12]

(f) The market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral at any time falls below 100 percent, Smith Barney delivers additional collateral on the following day to bring the level of the collateral back to 102 percent;

(g) Before entering into a Borrowing Agreement, Smith Barney furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement;

(h) The Borrowing Agreement contains a representation by Smith Barney that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements;

(i) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings) [13] had it remained the record owner of the securities;

(j) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, whereupon Smith Barney returns any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination;

(k) In the event that Smith Barney fails to return the borrowed securities, Smith Barney indemnifies the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate;

(l) All procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded;

(m) Only Plans, which together with related Plans,[14] having assets with an aggregate market value in excess of $50 million may lend securities to Smith Barney under an exclusive borrowing arrangement; and

(n) Prior to any Plan's approval of the lending of its securities to Smith Barney, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Plan, and Smith Barney informs the independent fiduciary that Smith Barney is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[15]

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of September 25, 1995.

[12] PTCE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

[13] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that Smith Barney will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[14] The Department notes the applicant's representation that the term ''related Plans'' refers to plans within the jurisdiction of Title I of the Act that are maintained by an entity or its affiliates, as ''affiliate'' is defined in section 407(d)(7) of the Act.

[15] The Department notes the applicant's representation that, under the proposed exclusive borrowing arrangements, Smith Barney will not perform the functions of a securities lending agent, nor will Smith Barney perform any services ancillary to securities lending, such as monitoring the level of collateral and the value of the loaned securities.

Summary of Facts and Representations

1. Smith Barney is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Smith Barney is one of the largest investment services firms in the United States, with $44 billion in assets and $3 billion in stockholders' equity.

2. Smith Barney, acting as principal, actively engages in the borrowing and lending of securities. Smith Barney utilizes borrowed securities either to satisfy its own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales or in the event of a failure to receive securities that a broker-dealer is required to deliver.

3. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. When cash is the collateral, the lender invests the cash and rebates a previously agreed upon amount to the borrower. The ''fee'' received by the lender as compensation for the loan of its securities then consists of the excess, if any, of the earnings on the collateral over the amount of the rebate. When the collateral consists of obligations other than cash, the borrower pays a fee directly to the lender.

4. Smith Barney requests an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Smith Barney is a party in interest, for example, by virtue of its providing fiduciary, custodial, or other services to such Plans. For each Plan, neither Smith Barney nor its Affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.[16] However, because Smith Barney, by exercising its contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to Smith Barney, the lending of securities to Smith Barney may be outside the scope of relief provided by PTCE 81–6.

5. For each Plan, Smith Barney will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of Smith Barney. Under the Borrowing Agreement, Smith Barney will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that Smith Barney pay all transfer fees and transfer taxes relating to the securities loans.

6. By the close of business on or before the day the loaned securities are delivered, the Plan will receive from Smith Barney (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit issued by persons other than Smith Barney or its Affiliates, or other collateral permitted under PTCE 81–6, as it may be amended or superseded. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. The independent fiduciary will monitor the level of the collateral daily and, if its market value falls below 100 percent, Smith Barney will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to 102 percent. If the market value of the collateral exceeds 104 percent, Smith Barney may require the Plan to return sufficient collateral to reduce the market value of the collateral to 102 percent.

7. Before entering into a Borrowing Agreement, Smith Barney will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by Smith Barney that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements.

8. In exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan will either (i) receive a reasonable fee which is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) have the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney. Smith Barney proposes that different fee structures apply to different securities or groups of securities, depending upon various factors affecting their lending value, such as the time of year, the country of origin, and supply and demand. The fees with respect to any prospective or outstanding securities loan may be set or reset periodically pursuant to an objective formula agreed upon by Smith Barney and the independent fiduciary of the Plan at the time the parties enter into the Borrowing Agreement. Such formula may not be changed without the prior written consent of the independent fiduciary. If the rate that Smith Barney pays to the Plan for borrowing securities changes under a formula, Smith Barney will notify the independent fiduciary at least 24 hours in advance of such change, which may be implemented only if the independent fiduciary does not object in writing thereto, prior to the effective time of such change. No change may be made to rates not established pursuant to a formula, unless Smith Barney notifies the independent fiduciary at least 24 hours in advance of any change and obtains the prior written consent of the independent fiduciary.

Under this fee arrangement, earnings generated by non-cash collateral will be returned to Smith Barney. The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

9. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of

[16] Condition 1 of PTCE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

any securities loan, Smith Barney will return the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination. If Smith Barney fails to return the securities or the equivalent thereof within the designated time, the Plan will have certain rights under the Borrowing Agreement to realize upon the collateral. If the collateral is insufficient to satisfy Smith Barney's obligation to return the Plan's securities, Smith Barney will indemnify the Plan with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate.

10. All the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded. In addition, in order to insure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans which, together with related Plans, having assets with an aggregate market value in excess of $50 million may lend securities under an exclusive borrowing arrangement to Smith Barney.

The applicant represents that the opportunity for the Plans to enter into exclusive borrowing arrangements with Smith Barney under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

11. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Smith Barney will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan; (b) the Plans will be permitted to lend to Smith Barney, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities; (c) in exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan will either (i) Receive a reasonable fee, which is specified in the Borrowing Agreement for each category of securities available for loan and is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) have the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney; (d) any change in the rate that Smith Barney pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the rate changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change; (e) Smith Barney will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to Smith Barney; (f) the collateral posted with respect to each loan of securities to Smith Barney initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary; (g) the Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, whereupon Smith Barney will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination; (h) neither Smith Barney nor its Affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan; (i) the Plan size requirement will insure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and (j) all the procedures will, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded.

Notice to Interested Persons

Notice of the proposed exemption will be given to the independent fiduciary of any Plan which is interested in lending securities to Smith Barney. Such notice will be delivered by hand or first-class mail. Comments are due within 45 days of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

VVP America, Inc. Incentive Savings Plan (the Plan), Located in Memphis, Tennessee

[Application No. D–10141]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sales by the Plan to VVP America, Inc. (the Employer), the sponsor of the Plan, of universal life insurance policies (the Policies) issued by the Confederation Life Insurance Company (CLI); provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) The Plan receives cash purchase prices for the Policies of no less than the greater of (1) the fair market value of each Policy as of the sale date, or (2) each Policy's cash surrender value (as described below) as of the sale date; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transactions.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan with 1,637 participants and total assets of $26,210,617 as of June 30, 1995. The Plan is sponsored by the Employer, VVP America, Inc., which is a Delaware corporation engaged in the distribution and sale of various glass products. The trustee of the Plan is Dean Witter Trust Company (the Trustee), located in Jersey City, New Jersey.

2. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The Accounts are invested pursuant to participant directions among investment options selected and made available by the Trustee (the Options). In addition to the Plan assets invested in the Options, 67 Accounts are invested in universal life insurance policies issued by Confederation Life Insurance Company (CLI), a Canadian corporation doing business in the

United States through branches in Michigan and Georgia. The Employer represents that a universal life policy is a flexible-premium individual life insurance contract maintainable for the insured's entire life, the premiums of which fund two components: (a) a protection component, providing a death benefit defined under the policy, and (b) an investment component, which earns interest on the premiums invested and which is debited with withdrawals and administration charges.

The Plan assets include the CLI universal life policies as the result of the Employer's 1992 acquisition of the Binswanger Glass Company (Binswanger). The Employer adopted Binswanger's 401(k) plan (the Predecessor Plan), which the Employer restated and renamed as the Plan. The Predecessor Plan had included among its investment options a universal life insurance option whereby participants could direct the purchase of individual universal life policies issued by CLI. Outstanding CLI policies purchased on behalf of Predecessor Plan participants became assets of the Plan when the Predecessor Plan was adopted by the Employer and renamed as the Plan. Plan participants are no longer able to direct the investment of their Accounts in universal life policies because the Options available to the Accounts in the Plan do not include a universal life insurance option. Of the approximately 250 CLI policies originally acquired by the Predecessor Plan, only 67 policies continue to be held by the Plan (the Policies), due to retirements and terminations of affected participants. The Employer represents that as of June 30, 1995, the Policies had a combined cash surrender value of $227,336.[17]

3. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed CLI in receivership, and on August 12, 1994, the insurance authorities of Michigan instituted legal rehabilitation proceedings (the Proceedings) against CLI. During the Proceedings, CLI is prohibited from payment of certain contractual obligations under life insurance policies outstanding. The Employer states that although the Proceedings do not affect CLI's ability to pay death benefits under the Policies, the Proceedings prohibit access to the cash surrender values of the Policies, and the Trustee is unable to cash in any of the Policies to fund the payment of termination benefits to affected participants who separate from service with the Employer while the Proceedings continue (Separated Participants). The Employer represents that the Policies of Separated Participants remain in force and continue to be held in their respective Accounts even though the cash surrender values of the Policies remain inaccessible, and that neither the Trustee nor the Separated Participants may gain access to the cash values of the Policies. The Employer represents that because the Accounts of the Separated Participants no longer receive employer/employee contributions, premiums are no longer paid on those Policies, and administrative charges are being debited against those Policies' cash surrender values. The Employer represents that among active Plan participants whose Accounts are invested in Policies, premiums continue to be paid on the Policies in the Accounts of those active participants who have so directed. The Employer states that six active participants have elected to discontinue having contributions allocated to the payment of premiums on Policies in their Accounts, and these Policies will continue to experience decline in cash values as administrative charges are debited against those values.

5. The Employer represents that it is unable to determine when or to what extent the Trustee will be able to have access to the Policies' cash surrender values to pay termination benefits of Separated Participants. Accordingly, until such time as access to the cash surrender values of the Policies is restored pursuant to the Proceedings, the Employer desires the ability to purchase Policies from the Accounts of Plan participants who have separated from service since the Proceedings commenced and those participants who separate from service in the future. To enable these purchase transactions, the Employer is requesting an exemption, as proposed herein.

6. The Employer proposes only to purchase Policies from the Accounts of separating Plan participants who specifically desire the cash liquidation of their Policies, and any participant who prefers to retain the Policy in his Account would be able to do so.[18] For each Policy which the Employer purchases from the Account of a Separated Participant, the Employer will pay such Account cash for the Policy in the amount of the cash surrender value of the Policy as of the date of the purchase, according to the most recent statement of such value provided by CLI. The Trustee has obtained an opinion as to the fair market values of the Policies from the accounting firm of Coopers & Lybrand, L.L.P. In an opinion letter dated August 4, 1995, Judy A. Faucett, F.S.A., a principal with Coopers & Lybrand, stated that the cash surrender values of the Policies represents a premium purchase price for the Policies since the Plan currently is not able to surrender the Policies to CLI to realize the Policies' cash values. The Employer will bear any expenses which may be incurred with respect to the proposed transactions. The Employer represents that the proposed transactions are necessary to enable the affected participants to receive the full accrued benefits in their Accounts by eliminating future decreases in cash surrender values of the Policies of Separated Participants. The Employer also maintains that the proposed transactions will enable the affected participants to avoid any risk associated with the continued holding of the Policies, due to the uncertainties surrounding the Proceedings.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Accounts of affected participants will receive cash for the Policies in the amount of the Policies' cash surrender value as of the sale date; (b) The transaction will enable the Accounts of affected participants to avoid risk of loss associated with continued holding of the Policies, and to avoid future decreases in cash surrender value of the Policies; (c) A principal of Coopers & Lybrand has determined that the proposed purchase price for the Policies represents a premium for the Policies; and (d) The Plan will not incur any expenses with respect to the transactions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202)219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve

[17] The Department notes that the decisions to offer and maintain Account investments in the Policies are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen or may arise as a result of offering or maintaining the Account investments in the Policies.

[18] For example, a terminated Plan participant whose Account holds one of the Policies may have become uninsurable since the original acquisition of the Policy and may chose to continue holding the Policy rather than acquiring its cash surrender value.

a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–12985 Filed 5–22–96; 8:45 am]

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[Prohibited Transaction Exemption 96–38; Exemption Application No. D–09410, et al.]

Grant of Individual Exemptions; RREEF USA Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

RREEF USA Fund—I (The Trust), Located in San Francisco, California

[Prohibited Transaction Exemption 96–38; Exemption Application No. D–09410]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the receipt by RREEF America L.L.C., the investment manager of the Trust (the Manager), of a certain performance compensation fee (the Performance Fee) in connection with the liquidation of the Trust, provided that the following conditions are satisfied:

(a) The terms and the payment of the Performance Fee shall be approved in writing, through approval of an amendment to the Group Trust Agreement, by independent fiduciaries of the plans that participate in the Trust (the Participating Plans);

(b) The terms of the Performance Fee shall be at least as favorable to the Participating Plans as those obtainable in an arm's-length transaction between unrelated parties;

(c) The total fees paid to the Manager by the Participating Plans that have invested in the Trust, shall constitute no more than reasonable compensation;

(d) The Performance Fee will be payable only when all of the assets of the Trust have been completely liquidated;

(e) The Performance Fee received by the Manager will be based on distributions, adjusted for inflation and present value, and will be calculated using two real hurdle rates of return. The Performance Fee will equal 10% after the Participating Plans have earned a 5% real return on the initial value of their investment and 20% after the Participating Plans have earned an 8% real return on the initial value of their investment;

(f) In the event of the Manager's resignation or termination as the investment manager to the Trust, the Investment Management Agreement would also terminate [1] and the Manager will not receive a Performance Fee;

(g) The Manager or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (2) of this Section (g) to determine whether the conditions of this exemption have been met, except that:

(1) (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (b) no party in interest, other than the Manager, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not

[1] Unless termination was in bad faith wherein the Manager may seek legal recourse.

maintained or are not available for the examinations required from (2) below.

(2) (a) Except as provided in paragraph (3) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (1) of this Part (g) shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Participating Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(3) None of the persons described above in paragraph (2)(a)(ii)–(iv) shall be authorized to examine the trade secrets of the Manager and its affiliates or any commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption will be effective as of January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager), Located in Atlanta, GA

[Prohibited Transaction Exemption 96–39; Exemption Application Nos. D–09969 and D–09970]

Exemption

Section I. Covered Transaction

The restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust),[2] to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This exemption is conditioned upon the requirements set forth below in Section II.

[2] The AT&T Trust and the BellSouth Trust are collectively referred to herein as the Trusts.

Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of $50 million and no Trust has invested more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:

(1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.

(2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.

(3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.

(4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates.

(f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.

(g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,

(1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.

(2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.

(3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of the Investment Manager includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative of, or partner of any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An ''Independent Fiduciary'' is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 8, 1995 at 60 FR 63065.

Written Comments

The Department received 54 written comments with respect to the notice of proposed exemption and no requests for a public hearing. The written comments were submitted by participants in the BellSouth Trust and were essentially the same, with the commentators expressing their concern that the granting of the exemption would somehow jeopardize the security of the participants' pension rights under Plans investing in the BellSouth Trust.

In response to these concerns, the Investment Manager represented that participants' pension rights would not be adversely affected by the granting of the exemption because the estimated annualized rate of return attributed to assets of the Trusts invested in Timberland, net of expenses, would be 11.02 percent if the Incentive Fee was imposed and 10.49 percent if the exemption was not granted. The Investment Manager noted that these estimates were based on both actual and estimated earnings generated by the timberland under its management to date.

The Investment Manager noted that if the value of any remaining timberland held by Timberland was to decline significantly before the liquidation of Timberland was completed, the rate of return to the Trusts also would be reduced. Such a reduction, according to the Investment Manager, would occur whether or not the exemption was granted. If the exemption was granted, the Investment Manager stated that it would receive a lower Incentive Fee assuming the investment return to the Trusts was reduced.

Thus, after giving full consideration to the entire record, the Department has decided to grant the subject exemption. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Herzog, Heine, Geduld, Inc., Located in New York, New York

[Prohibited Transaction Exemption 96–40; Exemption Application No. D–10018]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the extension of credit between Herzog, Heine, Geduld, Inc. (HHG) and various individual retirement accounts for which HHG serves as passive trustee or custodian (the HHG IRA or HHG IRAs) resulting from the in-kind transfer to HHG IRAs at the direction of the owners of such HHG IRAs of certain senior subordinated notes (the Notes) issued by HHG, and thereafter the holding of such Notes by the HHG IRAs; provided that: (1) officers, directors, and employees in HHG who are also owners of HHG IRAs do not participate in the transactions; (2) the owners of the HHG IRAs have exclusive responsibility and control over the investment of the assets of such accounts; (3) HHG has no discretionary authority or control with respect to the investment of the assets of the HHG IRAs involved in the transactions, nor does HHG render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; (4) a separate accounting of the assets in the HHG IRAs, including the Notes which have been acquired by such accounts, will be maintained by HHG; (5) the value of the Notes in each HHG IRA will at no time exceed 25 percent (25%) of the value of the assets of each HHG IRA; (6) the HHG IRAs will pay no fees or commissions in connection with the transactions; and (7) the combined total of all fees received by HHG for the provision of services to the HHG IRAs is not in excess of ''reasonable compensation'' within the meaning of section 4975(d)(2) of the Code.[3]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 22, 1996 at 61 FR 11892.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

The Buchanan Broadcasting Co., Inc. Profit Sharing Plan and Trust (the Plan), Located in Birmingham, AL

[Prohibited Transaction Exemption 96–41; Exemption Application Nos. D–10133 and D–10134]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing of certain office space in a building (the Property) by the individual account of Robert M. Buchanan, Jr. (the Account) in the Plan to Buchanan Broadcasting Co., Inc. (Buchanan Broadcasting) and to Westwood Square, Ltd. (Westwood Square), both parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the leases are and continue to be at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions with unrelated parties;

(b) The rent charged by the Account under the leases is and continues to be no less than the fair market rental value of the Property, as established every three years by the independent property manager;

(c) At all times, the fair market value of the leased premises represents no more than 25 percent of the total assets of the Account;

(d) Mr. Buchanan is the only participant of the Plan to be affected by the proposed transactions; and

(e) Within 90 days of the publication in the Federal Register of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square file Form 5330 with the Internal Revenue Service (the Service) and pay

[3] Pursuant to 29 CFR 2510.3–2(d), the HHG IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

all excise taxes applicable under section 4975(a) of the Code that are due by reason of certain prior prohibited lease transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1996 at 61 FR 15142.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

James Flynn & Associates, Ltd. Pension Plan (the Plan), Located in Scottsdale, Arizona

[Prohibited Transaction Exemption 96–42; Exemption Application No. D–10164]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the transfer of a parcel of real property (Lot 1) to the Plan by James T. and Britt Marie Flynn (the Flynns), disqualified persons with respect to the Plan, together with a cash payment by the Flynns to the Plan of $29,000, and (2) the transfer of a parcel of real property (Lot 2) by the Plan to the Flynns, provided the following conditions are satisfied: (a) the Plan receives not less than the fair market value of Lot 2 as of the date of the transfers; (b) the fair market values of Lots 1 and 2 are determined by a qualified, independent appraiser; and (c) the Flynns are the only participants in the Plan to be affected by the transactions, and they both desire that the transactions be consummated.[4]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1996 at 61 FR 15144.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pierre W. Mornell, M.D., A Sole Proprietorship, Defined Benefit Plan (the Plan), Located in Mill Valley, California

[Prohibited Transaction Exemption 96–43; Exemption Application No. D–10170]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain unimproved real property located in Mill Valley, California (the Property) by the Plan to Pierre W. Mornell and Linda C. Mornell, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price for the Property in the amount of the fair market value of the Property; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 22, 1996 at 61 FR 11894.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of May, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–12984 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–P

[4] Since Mr. Flynn is the sole stockholder of JFA and the Flynns are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Advisory Council on Employee Welfare and Pension Benefits Plans; Full Council Meeting Notice

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a full council meeting of the Advisory Council on Employee Welfare and pension Benefit Plans will be held on June 19, 1996, in Room N3437 C&D, U.S. Department of Labor building, Third and Constitution Avenue NW., Washington, D.C. 20210.

The purpose of the meeting, which will be from 3:30 until 4:30 p.m., is to hear progress being made by the three working groups of the council.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, D.C. 20210. Individuals or representatives or organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary of telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the

Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13009 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the Federal Register. Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: May 14, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–93–024–C.
FR Notice: 58 FR 13805.
Petitioner: Peabody Coal Company.
Reg Affected: 30 CFR 77.900.
Summary of Findings: Petitioner's proposal to use a magnetic motor starter instead of tripping a circuit breaker for ground phase protection and undervoltage protection, use a circuit breaker for short circuit protection, and use the magnetic motor starter and circuit breaker for overload protection for serving portable or mobile phase alternating current equipment considered acceptable alternative method. Granted Hawthorn Mine with conditions.

Docket No.: M–93–087–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section and physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–089–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of nonpermissible electric drags and associated nonpermissible electric components located within 150 feet from pillar workings.

Docket No.: M–93–090–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–091–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–092–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–099–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–100–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet

intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–101–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for annual revisions and supplements of the mine maps.

Docket No.: M–93–109–C.
FR Notice: 58 FR 39238.
Petitioner: Wenrich Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slop in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–111–C.
FR Notice: 58 FR 39238.
Petitioner: Wenrich Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–119–C.
FR Notice: 58 FR 39239.
Petitioner: R. and D. Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of miner above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–120–C.
FR Notice: 58 FR 39239.
Petitioner: R. and D. Coal Company.
Reg Affected: 30 CFR 1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–124–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–127–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–128–C.
FR Notice: 58 FR 39240
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–129–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–134–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of nonpermissible electric drags and associated nonpermissible electric components located within 150 feet from pillar workings.

Docket No.: M–93–135–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–136–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.

Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–138–C.
FR Notice: 58 FR 39241.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).

Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–139–C.
FR Notice: 58 FR 39241.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–140–C.
FR Notice: 58 FR 39242.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–141–C.
FR Notice: 58 FR 39242.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–155–C.
FR Notice: 58 FR 39570.
Petitioner: Little Rock Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 1 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–156–C.
FR Notice: 58 FR 39570.
Petitioner: Little Rock Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 1 Slope Mine with conditions for annual revisions and supplement of the mine map.

Docket No.: M–93–163–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–164–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–165–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–169–C.
FR Notice: 58 FR 41295.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–170–C.
FR Notice: 58 FR 41296.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being

mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–171–C.
FR Notice: 58 FR 41296.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–176–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–177–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–178–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–184–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1002–1.
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–185–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–186–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–194–C.
FR Notice: 58 FR 41298.
Petitioner: Brookside Coal Company.
Reg Affected: 30 CFR 1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Four Foot Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–203–C.
FR Notice: 58 FR 44700.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–205–C.
FR Notice: 58 FR 44700.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–206–C.
FR Notice: 58 FR 44701.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–218–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat

during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–220–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–221–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–232–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–234–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–235–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–236–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for Buck Mountain Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–263–C.
FR Notice: 58 FR 57626.
Petitioner: B & B Anthracite Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Rock Ridge Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–264–C.
FR Notice: 58 FR 57626.
Petitioner: B & B Anthracite Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Rock Ridge No. 1 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–285–C.
FR Notice: 58 FR 57626.
Petitioner: International Anthracite Corp.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for B & M Tunnel Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–289–C.
FR Notice: 58 FR 58567.
Petitioner: R S & W Coal Company, Inc.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–291–C.
FR Notice: 58 FR 58567.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1002–1(a).

Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–292–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for fire-fighting equipment in the working section.

Docket No.: M–93–293–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–294–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for R S & W Drift Mine with conditions for annual revisions and supplements of the mine map.

[FR Doc. 96–12973 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans, Advisory Council on Employee, Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 19, 1996, in Room N3437 C&D, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will be held in two sessions from 9:30 a.m. to noon and from 1 to 3:30 p.m., is to take public testimony on various federal tax reform proposals and the impact they may have on employer-sponsored plans, with the primary focus being on retirement plans.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record or the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13010 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Service Providers, Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Service Providers of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 18, 1996, in Room N–3437 C&D, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will run from 9:30 a.m. to noon, is to begin taking testimony on the need to offer assistance to plans in determining how best to select and monitor service providers.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Service Providers should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13011 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefit Administration

Working Group on Protections for Benefit Plan Participants, Advisory Council on Employee, Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Protections for Benefit Plan Participants of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 18, 1996, in Room N3437 B&C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will be held from 1 to 3:30 p.m., is to begin taking testimony on protection issues relating to plan assets.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Protections for Benefit Plan Participants of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13012 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Institute of Museum Services.

ACTION: Notice.

SUMMARY: This notice announces that the agency requests comment on a proposed information collection prior to submitting it to the Office of Management and Budget for review. The collection is entitled ''Status of Educational Programming Between Museums and Schools.''

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESS: Submit written comments to: Rebecca Danvers, Program Director, Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506. Comments may also be submitted by e–mail to Imsinfo@ims.fed.us.

FOR FURTHER INFORMATION CONTACT: Submit requests for more information, including copies of the proposed collection of information and supporting documentation, to IMS Program Office, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Information Collection Request

IMS is seeking comments on the following Information Collection Request.

Title: ''Status of Educational Programming Between Museums and Schools.''

Affected Entities: Parties affected by this information collection are museum educators.

Abstract: IMS supports museum school partnerships for K–12 school children through the Museum Leadership Initiative program. In the fall of 1995, IMS sponsored a conference on museum school partnerships. Information about the projects IMS has supported and on selected conference proceedings will be published and disseminated widely to the museum and school communities. IMS also intends to collect, analyze and disseminate data to document the current status of educational programming activity between museums and schools.

Currently, no body of data exists to identify how museums are interacting with schools to advance the education of the nation's school age population. Therefore, we propose to survey a portion of the museum community with a brief questionnaire to collect this information. The data collection is intended to provide the basis of statistical conclusions about the nature and level of educational programming between museums and schools, but rather is to illustrate the current status and the possibilities for further development.

Burden Statement: For this collection, the estimated average burden hours is .5 and the frequency of response is once. The number of respondents is 500.

II. Request for Comments

IMS solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Inspection

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 IMS without prior notice. All comments, written and printed versions of electronic comments, not including any information claimed as CBI, are available for inspection from 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays, in Rm. 510, Institute of Museum Services, 1100 Pennsylvania Ave., NW., Washington, DC.

List of Subjects

Museums and Information collection requests.

Dated: May 17, 1996.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 96–12933 Filed 5–22–96; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: June 12, 1996; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 565, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: William A. Weigand, Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1996 Group proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13005 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 920463, as amended), the Nationals Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: June 13, 1996 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1150, 1120, 1105.17, 1105.05.

Contact Person(s): Drs. Merrill Patrick and Robert Voigt, Program Director, CISE/Directorate, Room 1105, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Telephone: (703) 306–1900.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Academic Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13004 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, June 12, 1996, 6:00 p.m. to 9:00 p.m.; Thursday, June 13, 1996, 8:00 a.m. to 6:00 p.m.; Friday, June 14, 1996, 8:00 a.m. to 3:00 p.m.

Place: Latham Hotel, 3000 M Street NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Janice Earle, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1620

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Middle School Science Teachers Enhancement's Program submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13000 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).

Date and time: June 12–13, 1996 8:30 a.m. to 5:30 p.m.

Place: Holiday Inn 4610 North Fairfax Drive, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13003 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).

Date and Time: June 10, 1996, 8:30 a.m. to 5:30 p.m.

Place: Holiday Inn 4610 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including

technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13007 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research will be holding panel meetings for the purpose of reviewing proposals submitted to the Office of Multidisciplinary Activities in the area of Optical Science and Engineering. In order to review the large volume of proposals, panel meetings will be held on June 12–14, 1996 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 a.m. to 5:00 p.m. each day.

Contact Person: Dr. John Weiner, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1800.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13006 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science and Technology Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science and Technology Infrastructure (#1373).

Date and Time: June 9, 1996; 7:30 p.m.–10:00 p.m.. June 10–12, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 375 & 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Gallery 1, Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Room 1270, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Facilities component of the Academic Research Infrastructure Program.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13002 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral & Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committe for Social, Behavioral & Economic Sciences (#1171).

Date and Time: June 6–7, 1996; 900 a.m. to 5:00 p.m.

Place: Room 920 & 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Steven J. Breckler, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1731.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Social Psychology Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for the full committee.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13001 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to utilize American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, ''Low Temperature Overpressure Protection'' to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated March 19, 1996. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' to allow application of an alternate methodology to determine the LTOP setpoints for Zion Nuclear Power Station, Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, ''Low Temperature Overpressure Protection,'' which has been approved by the ASME Code Committee. The content of this Code Case has been incorporated into

Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, ''Codes and Standards,'' and Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability'' have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. 10 CFR Part 50, Appendix G, defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power Operated Relief Valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint.

In addition, to prevent damage to reactor coolant pump seals, the operator must maintain a minimum differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The 10 CFR Part 50, Appendix G, safety margin adds instrument uncertainty into the LTOP setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint would result in an operating window between the LTOP setpoint and the minimum pressure required for reactor coolant pump seals which is too small to permit continued operation. Operating with these limits could result in the lifting of the PORVs or damage to the reactor coolant pump seals during normal operation. Using Code Case N–514 would allow the licensee to recapture most of the operating margin that is lost by factoring in the instrument uncertainties in the determination of the LTOP setpoint. The net effect of using Code Case N–514 is that the setpoint will not change significantly with the next setpoint analysis. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Zion, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with ASME Code Case N–514. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated March 19, 1996, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 to compute its LTOP setpoints.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Zion reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on April 22, 1996, the staff consulted with the Illinois State official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 19, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 16th day of May 1996.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12947 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–206, 50–361 and 50–362]

Southern California Edison Company and San Diego Gas and Electric Company, San Onofre Nuclear Station; Notice of Temporary Closing of Local Public Document Room

Notice is hereby given that the Main Library, University of California, Irvine, California, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for the Southern California Edison Company's and San Diego Gas and Electric Company's San Onofre Nuclear Station, will close on June 15, 1996, for seismic upgrades to the library building. The library is scheduled to reopen in January 1997.

During this period, every effort will be made to meet the informational needs of LPDR patrons. NRC records from mid-1996 forward will be available on microfiche in the Science Library, University of California, Irvine, California. The locations of other LPDRs that maintain records on San Onofre can be obtained by contacting the NRC LPDR staff. Their toll-free telephone number is (800) 638–8081. Requests for records may also be addressed to the NRC's Public Document Room (PDR), 2120 L Street NW., Lower Level, Washington, DC 20555–0001. The PDR's toll-free telephone number is (800) 397–4209.

Persons interested in using the San Onofre LPDR collection while the Main Library is closed are asked to contact the NRC LPDR staff at their toll-free telephone number listed above.

Questions concerning the NRC's LPDR program or the availability of agency documents in the Irvine area should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (800) 638–8081.

Dated at Rockville, Maryland, this 17th day of May, 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–12948 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Individual Plant Examinations and on Probabilistic Risk Assessment

The ACRS Subcommittees on Individual Plant Examinations and on Probabilistic Risk Assessment will hold a joint meeting on June 11–12, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 11, 1996—8:30 a.m. until the conclusion of business

Wednesday, June 12, 1996—8:30 a.m. until 12:00 Noon

The Subcommittees will discuss the Individual Plant Examination (IPE) Insights Report (June 11, 1996), and the staff's research program related to probabilistic risk assessment (June 12, 1996).

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineers, Mr. Michael T. Markley (telephone 301/415–6885) or Mr. Brian Hughes (telephone 301/415–5767) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12949 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Probabilistic Risk Assessment and on Westinghouse Standard Plant Designs

The ACRS Subcommittees on Probabilistic Risk Assessment and on Westinghouse Standard Plant Designs will hold a joint meeting on June 5, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, June 5, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the Level 1 probabilistic risk assessment, and low-power and shutdown risk assessment related to the Westinghouse AP600 design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Corporation, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineers, Mr. Noel Dudley (telephone 301/415–6888) or Mr. Brian Hughes (telephone 301/415–5767) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12950 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents

The ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents will hold a joint meeting on June 3–4, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 3, 1996—8:30 a.m. until the conclusion of business

Tuesday, June 4, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will discuss operating experience, technical issues, and rulemaking efforts associated with steam generator performance. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12951 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Protecting the Identity of Allegers and Confidential Sources; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This revision is an update of the Commission's policy for protecting the identity of an individual who has been granted confidentiality. This revision reflects the changes in the organization of the NRC and the agency's practices concerning confidentiality, including informing individuals of the availability of confidentiality, circumstances under which confidentiality will be granted, and circumstances under which the identity of confidential sources will be revealed. The revision also describes the measures taken by the NRC to protect the identity of all individuals who bring safety concerns to the agency, regardless of whether the individual is granted confidentiality. This statement of policy is not a major rule as defined in Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Edward T. Baker, Agency Allegation Advisor, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001; telephone: (301) 415–8529.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1985 (50 FR 48506), the Nuclear Regulatory Commission (NRC or Commission) issued a Statement of Policy to provide a clear, agency-wide policy on the granting of confidentiality to persons who provide information to the NRC concerning licensee activities. The Commission is revising the policy statement to reflect changes in the NRC organization and criteria for disclosing the identity of confidential sources. The policy statement also describes the measures taken to protect the identity of any individual who brings safety concerns to the NRC and the circumstances under which the individual's identity may be disclosed. The Commission's inspection and investigatory programs rely in part

on people voluntarily coming forward with information. Some individuals will come forward only if they are confident that their identities will be protected from public disclosure. Therefore, safeguarding the identities of these individuals is a significant factor in ensuring the future voluntary flow of this information. The Commission will make all reasonable efforts to protect the identity of anyone who brings safety concerns to the NRC. This policy statement applies to all NRC offices except the Office of the Inspector General (OIG).

The Commission's policy statement on confidentiality has not been revised since 1985. Since then, changes in the NRC's organizational structure and agency practice concerning confidentiality and protecting the identity of allegers and confidential sources have occurred that are not reflected in the existing policy statement. Additionally, the review team for reassessing the NRC program for protecting allegers recommended in NUREG–1499, ''Reassessment of the NRC's Program for Protecting Allegers Against Retaliation,'' that the policy statement be revised.

The existing policy statement specifically discusses the role of the Office of Inspector and Auditor, which was abolished following creation of the OIG in 1989. The OIG has established its own procedures on confidentiality in accordance with the Inspector General Act of 1978. The agency's practice concerning protecting the identity of allegers, informing them of the availability of confidentiality, and disclosing the identity of confidential sources has changed in the intervening period. In order to reflect those changes and the NRC staff's experience in dealing with confidentiality, the existing policy statement is being revised in the following respects:

(1) On March 22, 1995, the Commission approved the disclosure of the identity of a confidential source based on the existence of an overriding safety concern. The existing policy statement does not speak to disclosure in this circumstance.

(2) The existing policy statement restricts NRC employees from initiating a discussion of confidentiality except in the following circumstances:

(a) It is apparent that an individual is not providing information because of fear that his/her identity may be disclosed; or

(b) It is apparent from the surrounding circumstances that the individual wishes his/her identity to remain confidential.

On August 22, 1994, after notifying the Commission, the Office of the Executive Director for Operations (EDO) issued guidance to the NRC staff that an alleger who has not requested to be a confidential source be clearly informed that he or she is not considered a confidential source. If the allegation is received during a phone call, the NRC staff is required to tell the alleger of this position during the initial call. This position is also stated in the letter sent to an alleger acknowledging receipt of the allegation and documenting the NRC staff's understanding of the alleger's concerns. The NRC staff has adopted this position to avoid misperceptions by allegers as to whether they are considered confidential sources.

(3) The existing policy statement does not specifically address the problem of investigating discrimination when confidentiality has been granted to the individual who alleges that he or she was the victim of discrimination.[1] In practice, individuals who allege that they are victims of discrimination and who request confidentiality are informed of the difficulty of performing an investigation of this type of concern without revealing the name of the subject of the discrimination. These individuals are told the NRC will not normally investigate the discrimination aspects of their allegation if confidentiality is granted.

(4) In addition, a change to the disclosure criteria allows the Office of Investigations (OI) to disclose the identity of a confidential source, on a need-to-know basis, to either the U.S. Department of Justice (DOJ) or to another law enforcement agency. This disclosure would occur without seeking prior Commission approval or notifying the confidential source. Under the existing policy statement, the NRC is required to contact the confidential source before releasing his or her identity. If the confidential source agrees to the release, the EDO or the Director, OI, is authorized to release the identity. If the confidential source objects to the release or cannot be reached, the agency may not release the identity without specific Commission approval.

It is common practice in the law enforcement community for investigative agencies and prosecutors' offices to share the identity of confidential sources if there is a legitimate need-to-know. Traditionally, in the interest of preserving the integrity of any ongoing investigation or prosecution, the sources are not informed that their identities have been shared. Additionally, DOJ and other law enforcement agencies appreciate the sensitivity with which they need to treat the identity of confidential sources. The ability to share the identity of confidential sources in this manner will enhance the sense of partnership in pursuing wrongdoing investigations.

(5) A provision has been added to allow the NRC official who granted the confidentiality to withdraw it without further approval, provided the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person that was granted confidentiality.

In addition to these changes to the Commission's policy on confidentiality, this revision describes the basic protection afforded individuals who bring safety concerns to the NRC but have not been formally granted confidentiality, that is, allegers.

The primary differences between the protection afforded confidential sources and allegers are:

- An NRC office director or regional administrator may approve the disclosure of the identity of an alleger, while the approval of the Commission, the EDO, or the Director of the Office of Investigations (OI) is necessary for disclosure of the identity of a confidential source;
- There is a formal, signed agreement between a confidential source and the NRC that sets forth the protection afforded and the circumstances in which a confidential source's identity may be revealed; and
- OI may disclose the identity of an alleger outside the agency during the pursuit of a wrongdoing investigation at their discretion without the knowledge or consent of the alleger. For confidential sources, OI may only disclose the identity to DOJ or another law enforcement agency without the confidential source's knowledge or consent.

This revised final policy statement provides a comprehensive statement of the Commission's position and reflects agency practice concerning confidentiality and the addition of the protection afforded all individuals who bring safety concerns to the NRC.

Small Business Regulatory Enforcement Fairness Act

The NRC has consulted with the Office of Management and Budget and concluded that this policy statement is not a major rule as defined in 5 U.S.C. 804(2).

[1] In this policy statement, the term ''discrimination'' includes allegations of harassment and intimidation.

Statement of Policy

The Commission's investigative and inspection programs rely in part on individuals coming forward with information about safety concerns or perceived wrongdoing. All individuals should feel free to communicate to the NRC any safety or wrongdoing concerns.[2] It is NRC's responsibility to communicate fully with individuals raising the concerns, to provide the status and details of NRC review of the concerns, to address the concerns and respond to the individual in a timely manner, and to protect the identity of the individual to the greatest degree possible. The NRC recognizes that routine public release of the identities of those who come forward with this information could lead to reprisals against those individuals. Reprisals may involve not only physical harm to the individual, but may take other forms such as employment-related discrimination, including blacklisting, economic duress, or ostracism. Obviously, these actions would deter others from coming forward with information and could jeopardize the effectiveness of the NRC's oversight activities. Both Congress and the Commission have recognized this concern. Section 211 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5851) and the Commission's related employee protection regulations are designed to protect those who assist the NRC in carrying out its safety responsibilities from discrimination by their employers. In addition, the Commission has developed procedures for protecting the identity of individuals who bring safety concerns to the NRC (allegers), and for protecting the identity of individuals who have been granted confidentiality (confidential sources).

Identity Protection for Allegers

In resolving allegers' concerns, the NRC intends to make all reasonable efforts not to disclose the identity of an alleger outside the agency. NRC staff personnel who receive an allegation are required to forward all information to an NRC allegation coordinator. The allegation coordinator provides the identity of an alleger only to NRC staff who have a need to know an alleger's identity, e.g., an inspector or investigator assigned to interview an alleger. In addition, documents containing the identity of allegers are stored in locked cabinets with controlled access and are not placed in the NRC's public document rooms.

However, the NRC may reveal the identity of an alleger outside the agency under the following circumstances:

- The alleger clearly states that he or she has no objection to being identified;
- The NRC determines that disclosure of the alleger's identity is necessary to protect the public because of an overriding safety issue identified based on the alleger's concerns;
- Disclosure of the alleger's identity is necessary to respond to a request from Congress or State or Federal agencies in the furtherance of NRC responsibilities under law or public trust;
- Disclosure is necessary pursuant to a court order or an NRC adjudicatory board order;
- The alleger takes an action that is inconsistent with and overrides the purpose of protecting his or her identity;
- Disclosure is necessary to pursue a wrongdoing investigation; or
- Disclosure is necessary to support a hearing on an enforcement action.

In addition, if the NRC is investigating an allegation that the alleger was a victim of discrimination because he or she raised a safety concern, it would be extremely difficult to investigate such an allegation without naming the individual who was the subject of discrimination. NRC Management Directive 8.8, ''Management of Allegations,'' contains additional information concerning protecting the identity of allegers and the circumstances when the identity may be disclosed.

Confidentiality

The protective measures and disclosure circumstances described above apply to all allegers. If the individual is granted confidentiality, as described below, the individual is considered a confidential source. The Commission's regulations in 10 CFR 2.790(a)(7) authorize withholding the identities of confidential sources from public release. Further, 10 CFR 21.2(d) provides that, ''as authorized by law'', the identity of individuals ''not subject to the regulations in this part'' who report certain nuclear safety-related problems ''will be withheld from disclosure.'' Additionally, under 10 CFR 19.16(a) if a worker requesting an inspection requests that his or her name not be included in the copy of the request given to the licensee, the name of the worker and the name of individuals referred to in the request must be withheld. The following discussion explains the Commission's general policy regarding confidentiality.

1. Circumstances Under Which Confidentiality May Be Granted

Although the Commission recognizes the importance of confidentiality, it does not believe that confidentiality should be granted to all individuals who provide information to the NRC or that confidentiality it should be granted routinely, particularly in light of the protection afforded all allegers. The Commission believes that confidentiality should be granted only when necessary to acquire information related to the Commission's responsibilities or when warranted by special circumstances. For instance, confidentiality should ordinarily not be granted when the individual is willing to provide the information without being given confidentiality.

If it becomes apparent that an individual is not providing information because of a fear that his or her identity will be disclosed, an authorized NRC employee may suggest a grant of confidentiality. Similarly, an authorized NRC employee may suggest confidentiality in the absence of a request when it is apparent from the surrounding circumstances that the individual wishes his or her identity to remain confidential. This could be the case if an individual sets up an interview in a secretive manner.

The Commission recognizes that some individuals who desire confidentiality may not request it because of an erroneous belief that the identities of everyone providing information to the NRC are kept in confidence. Some individuals may not provide information because they do not know that confidentiality is available. Therefore, the Commission has decided to adopt a policy that requires an individual to explicitly request confidentiality. In the initial contact with the NRC, the extent to which the NRC can protect an alleger's identity will be explained. If the individual does not request confidentiality, the individual will be informed that he or she is not considered a confidential source. If the individual asks about confidentiality, the differences between identity protection for allegers and confidential sources will be explained. If the individual then requests confidentiality, the NRC staff will evaluate the request and inform the individual if confidentiality was granted.

2. The Manner and Form in Which Confidentiality Should Be Granted and Disseminated Within the NRC

The Commission has delegated authority to the Executive Director for

[2] The Commission expects licensees and contractors to create and maintain an environment conducive to employees raising safety concerns. See ''Statement of Policy on Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation.'' (61 FR 24366; May 14, 1996)

Operations (EDO) and the Director, Office of Investigations (OI), to designate those persons within their organizations who will be authorized to grant confidentiality. Confidentiality will be granted only when an NRC employee authorized to grant confidentiality and the individual requesting confidentiality sign a standard NRC Confidentiality Agreement, unless it is impossible to sign the agreement at the time the information is obtained. The agreement will explain the conditions to which the NRC will adhere when it grants confidentiality, as set forth in this policy statement. When it is impossible to sign a Confidentiality Agreement at the time the information is obtained, such as when the information is obtained over the telephone, confidentiality may be given verbally pending the signing of the Confidentiality Agreement, which must be done within a reasonable time. If confidentiality is granted verbally, it must be fully documented. If the Confidentiality Agreement is not signed within a reasonable time, the EDO or Director, OI, as appropriate, will determine if confidentiality should be continued.

After confidentiality is granted, the individual's name should be divulged to NRC employees only on a need-to-know basis. Each NRC employee with access to a confidential source's identity should take all necessary steps to ensure that the identity remains confidential. The EDO and the Director, OI, will ensure that consistent procedures are developed throughout the agency for implementing this requirement that should prevent inadvertent or unauthorized disclosures.

3. Circumstances Under Which Identity of a Confidential Source Will Be Divulged

The Commission stresses the importance of protecting the identity of a confidential source. However, there are six circumstances under which the identity of a confidential source may be released outside the NRC by the Commission or by certain NRC staff officials as described below. The Commission emphasizes that in each of these cases it will attempt to limit disclosure to the minimum necessary and that it expects disclosure to occur only rarely.

(1) The first category involves disclosure to a licensee because of an overriding safety issue. There are conceivable circumstances when public health and safety require the NRC to divulge the identity of a confidential source to allow a licensee to correct an immediate safety concern. If this situation occurs, which we expect to be infrequent, the NRC will try to limit the disclosure to the licensee's senior management.

In most circumstances, the agency will be able to give a licensee sufficient information to correct an immediate safety issue without divulging the name of a confidential source. However, the Commission believes individuals should be aware their identity could be divulged if this situation occurs.

(2) The second category involves disclosure pursuant to a court order. It is conceivable that a licensee or other entity could obtain a court order requiring the NRC to divulge the identity of a confidential source. If that happens, the NRC will seek to keep the disclosure limited to the minimum necessary through protective orders or other means.

(3) The third category of circumstances when a confidential source's identity might be disclosed outside the NRC involves disclosure during an NRC adjudicatory proceeding. The Commission, in a separate Statement of Policy on Investigations, Inspections, and Adjudicatory Proceedings published on September 13, 1984 (49 Fed. Reg. 36032), has provided that any licensing board decision to order disclosure of the identity of a confidential source shall automatically be certified to the Commission for review. Therefore, the only adjudicatory board within the NRC with the actual authority to require that the identity of a confidential source be revealed is the Commission. The Commission will follow current judicial standards in determining whether to disclose the identity of a confidential source.

(4) The fourth circumstance when the identity of a confidential source might be released is in response to a request by Congress. Section 303 of the Atomic Energy Act of 1954, as amended, requires the NRC to keep congressional committees with jurisdiction over the NRC ''fully and currently informed with respect to the activities* * * of the Commission.'' That section also requires ''[a]ny Government agency [to] furnish any information requested by [congressional] committees with appropriate jurisdiction.'' The Commission may have to release the identity of a confidential source in response to a congressional request. Although any such request will be handled on an individual case-by-case basis, the Commission will disclose the identity of a confidential source only if the request is in writing. The Commission will make its best efforts to have any such disclosure limited to the extent possible.

(5) The fifth circumstance when the identity of a confidential source may be revealed is in response to a request from a Federal or State agency. The Commission recognizes its responsibility to assist other agencies in their functions. However, the Commission also recognizes that providing the identities of confidential sources to other agencies could adversely affect the flow of information to the Commission. The Commission has decided to balance these two considerations as follows. If the requesting agency demonstrates that it requires the identity in furtherance of its statutory responsibilities and agrees to provide the same protection to the source's identity that the NRC promised when it granted confidentiality, the NRC will make a reasonable effort to contact the source to determine if he or she objects to the release. If the source can be reached and does not object, the EDO or his designee, or the Director, OI, are authorized to provide that identity to the requesting agency.

If the source either objects to the release of his or her identity, or cannot be reached, the EDO or his designee, or the Director, OI, may not release the source's identity, except as noted in (6) below, but shall advise the requesting agency of the situation. The requesting agency may then ask the Commission to release the identity. Although ordinarily the source's identity will not be provided to another agency over the source's objection or without contacting the individual, in extraordinary circumstances when furtherance of the public interest requires release, the Commission may release the identity of a confidential source to another agency despite the objections of that source or without being able to contact the person. However, even in those cases the requesting agency must agree to provide the same protection to the source's identity that was promised by the NRC.

(6) As an exception to (5) above, when OI and the U.S. Department of Justice (DOJ) are pursuing the same matter or when OI is working with another law enforcement agency, the EDO or the Director, OI may reveal the identity of a confidential source to DOJ or the other law enforcement agency, as needed, without notifying the individual or consulting with the Commission.

It is common practice in law enforcement and when conducting criminal prosecutions for agencies to share the names of confidential sources if there is a need to know. One of the primary reasons for these exchanges of

sensitive information is the protection of the confidential source. It is essential that the investigating and prosecuting parties know the identity of a confidential source to physically protect the source during the course of investigative activities and to prevent compromising the source's identity through some inadvertent action by one of the outside investigators or prosecutors. Because it is inappropriate for a source to know the investigative or prosecutorial activities, strategies, or tactics, it is also inappropriate to notify the source that his or her identity is being shared.

4. Circumstances Under Which Confidentiality May Be Revoked

A decision to revoke a grant of confidentiality can only be made by (1) the Commission, (2) the EDO, or (3) the Director, OI. However, the Commission emphasizes that a grant of confidentiality will be revoked only in the most extreme cases. Generally, confidentiality will be revoked only when a confidential source personally takes some action so inconsistent with the grant of confidentiality that the action overrides the purpose behind the confidentiality. For instance, this can happen when the source discloses information in a public forum that reveals his or her status as a confidential source or when he or she has intentionally provided false information to the NRC. Before revoking confidentiality, the Commission will attempt to notify the confidential source of its intent and provide the individual an opportunity to explain why their identity should not be disclosed.

5. Withdrawal of Confidentiality

The NRC official granting confidentiality may withdraw confidentiality without further approval if the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person who was granted confidentiality.

6. Conclusion

The Commission views protecting the identity of allegers and confidential sources as an important adjunct to investigative and inspection programs. Therefore, the Commission places great emphasis on protecting the identity of individuals who bring safety concerns to the NRC. However, the Commission recognizes there are limited circumstances when the identity of an alleger or confidential source will be divulged outside the NRC. In those circumstances the Commission will attempt to limit disclosure to the extent possible.

Dated at Rockville, MD, this 17th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–12952 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:00 a.m. on Monday, June 3, 1996, and at 9:00 a.m. on Tuesday, June 4, 1996, in Philadelphia, Pennsylvania.

The June 3 meeting is closed to the public (see 61 FR 24341, May 14, 1996). The June 4 meeting is open to the public and will be held at the Four Seasons Hotel, One Logan Square, in the Washington Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Agenda

Monday Session

June 3—10:00 a.m. (Closed)

1. Consideration of a Filing with the Postal Rate Commission on Classification Reform of Special Services. (John H. Ward, Vice President, Marketing Systems)

Tuesday Session

June 4—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, May 6–7, 1996.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Consideration of the Semiannual Report of the Postal Inspection Service. (Chairman Tirso del Junco)
4. Consideration of Amendments to BOG Bylaws. (Chairman Tirso del Junco)
5. Capital Investments.
   a. Terre Haute, Indiana, Processing & Distribution Center. (Rudolph K. Umscheid, Vice President, Facilities)
   b. 42 Tray Management Systems. (William J. Dowling, Vice President, Engineering)
   c. Flats Forwarding Terminal. (William J. Dowling, Vice President, Engineering)
   d. Associate Office Infrastructure—Deployment Phase I. (Richard D. Weirich, Vice President, Information Systems)
   e. Point of Service ONE—Stage 1 Deployment. (Patricia M. Gibert, Vice President, Retail)
   f. Corporate Call Management—Prototype National Service Center. (Francia C. Morhardt, Manager, Customer Service Management)
6. Report on Allegheny Area Operations. (Mr. Steele)
7. Tentative Agenda for the July 1–2, 1996, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–13145 Filed 5–21–96; 12:47 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Medical Reports: OMB 3220–0038.

Under Sections 2(a)(1)(iv), 2(a)(2) and 2(a)(3) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition is such that they are unable to (1) work in their regular occupation (occupational disability); or (2) work at all (permanent total disability). The requirements for establishment of disability and proof of continuance of disability are prescribed in 20 CFR 220. Under Sections 2(c) and 2(d) of the RRA, annuities are also payable to qualified spouses, widows or widowers who have in their care a qualified child who is under a disability which began before age 22; widows or widowers age 50–59 who are under a disability; and remarried widows and surviving divorced wives who would also be entitled under Sections 202(e) and 202(f) of the Social Security Act.

For entitlement under Section 2(d)(v) of the RRA, the individual must have an impairment which is so severe that, in accordance with the regulations of the Social Security Administration, any gainful activity would be precluded. The Railroad Retirement Board (RRB) also determines entitlement to a period of disability or early Medicare entitlement for qualified claimants.

To enable the RRB to determine the eligibility of an applicant or annuitant for disability benefits under the RRA, the RRB requests supportive medical evidence from railroad employers, personal physicians, private hospitals and state agencies. The RRB currently utilizes Forms G–3EMP, G–250, G–250a, G–260, GL–12, RL–11b, and RL–11d to obtain the necessary medical evidence. Completion is voluntary. One response is requested of each respondent.

ESTIMATE OF RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	3,800	10	633
G–250	13,500	37	8,325
G–250a	23,500	20	7,833
G–260	50	25	21
GL–12	10	40	7
RL–11b	9,800	10	1,633
RL–11d	250	10	42
Total	50,910	.....	18,494

The RRB proposes minor editorial changes to all of the forms in the collection, primarily to provide respondents the option of responding by facsimile machine and to incorporate language required by the Paperwork Reduction Act of 1995.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–12964 Filed 5–22–96; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee Noncovered Service Pension Questionnaire.

(2) *Form(s) submitted:* G–209.

(3) *OMB Number:* 3220–0154.

(4) *Expiration date of current OMB clearance:* July 31, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 500.

(9) *Total annual reporting hours:* 55.

(10) *Collection description:* Under Section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–12897 Filed 5–22–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21962; 811–3673]

New York Localities Legal Obligations Cash ACCESS Trust; Notice of Application

May 17, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: New York Localities Legal Obligations Cash ACCESS Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 26, 1996.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 11, 1996, and should be accompanied by proof of service on the applicant, 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. Applicant, 380 Madison Avenue, Suite 2300, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or David M. Goldenberg, Branch Chief at (202) 942–0564 (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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On February 25, 1983, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was declared effective on March 9, 1984, but applicant has made no public offering of its shares.

2. On January 22, 1993, the applicant distributed all of its assets to its sole and initial shareholder.

3. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

5. Applicant has terminated its legal existence as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13025 Filed 5–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26518]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 17, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 10, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southern Company Services, Inc., et al. (70–8821)

Southern Company Services, Inc. (''SCS''), 64 Perimeter Center East, Atlanta, Georgia 30346, a wholly-owned subsidiary service company of The Southern Company (''Southern''), a registered holding company, and five electric utility subsidiary companies of Southern (''Operating Companies'')—Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291; Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308; Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; and Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401—have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder for authorization to engage in brokering and marketing activities relative to electric power and energy commodities (''Activities'').

Through the Operating Companies, Southern provides retail electric service in much of Georgia and Alabama and in parts of Florida and Mississippi. Southern also provides firm wholesale service to municipalities and rural electric cooperatives within the territories served by the Operating Companies. The Operating Companies buy and sell wholesale electric power in transactions with other electric utility companies that are directly interconnected with one or more Operating Companies (''Tier 1 Utilities'') or electric utility companies that are directly interconnected with Tier 1 Utilities (''Tier 2 Utilities'') within a defined region (''Sales Region''), which includes the territories served by the Operating Companies.[1] On occasion, the Operating Companies also engage in wholesale electric power transactions outside the Sales Region.

When the Operating Companies have excess electric power generation, SCS, as agent for the Operating Companies, attempts to market this surplus to other customers. SCS, as agent for the Operating Companies, also seeks out the most economic sources of electric power. These transactions often involve base load capacity purchases and sales. In the course of these activities, SCS and the Operating Companies have developed extensive knowledge about the loads and resources of other electric power sources throughout and outside the Sales Region.

The Activities would include (i) brokering of electric power by SCS between third-party sellers and buyers (''Power Brokering''); (ii) marketing of electric power, largely within the Sales Region, in transactions that do not involve Southern system generation or Southern system transmission (''Power Marketing''); and (iii) marketing and brokering of other forms of energy commodities by SCS or the Operating Companies (''Commodities Transactions'').

With respect to Power Brokering, there would be no price exposure or significant financial risk for SCS because SCS would neither buy nor sell electric power. Power Brokering would be incidental to its principal business of centralized administrative and management services to Southern system companies.

Power Brokering would be carried on by personnel employed by SCS who engage in the day-to-day power marketing and system supply activities on behalf of the Operating Companies. Revenues derived from Power Brokering will be credited entirely to reduce the cost of operation of SCS, which will, in turn, reduce its cost of service to the Operating Companies and other system subsidiaries.

With respect to Power Marketing, SCS, as agent for one or more of the Operating Companies, would enter into separate contracts with prospective electric power suppliers and customers, either or both of which usually are located within the Sales Region.[2]

With respect to Commodities Transactions, SCS and the Operating Companies would, in connection with the sale of electric power, serve as a single source of gas, oil or coal as well. SCS and the Operating Companies would not broker or market other energy commodities except in conjunction with making an electricity sale.

All of the Activities would be carried on by personnel employed by SCS who engage in the day-to-day power marketing and fuel procurement activities of the Southern system. Except in the case of Power Brokering, SCS would act as agent for the account of those Operating Companies that are directly related to the customer involved and will therefore have no beneficial interest in the revenues from the Activities. The Operating Companies would act as principals and

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[1] The Tier 1 and Tier 2 Utilities include all member utilities of the Southeastern Electric Reliability Council, the Entergy Corporation system, and certain other utility systems to the west and northwest of the Southern system.

[2] Southern, through Southern Energy Marketing, Inc. (''SEMI''), an ''exempt wholesale generator'' under section 32 of the Act, engages in wholesale electric power marketing to unaffiliated third parties. SEMI also is authorized to engage through other indirect subsidiaries in electric power marketing and brokering transactions. HCAR No. 26468 (Feb. 2, 1996). However, SCS and the Operating Companies may not provide to other Southern marketing subsidiaries non-public information on actual or potential wholesale customers or on prices or other terms of electric power to such wholesale customers. This prohibition is part of the ''Codes of Conduct'' filed with FERC that are applicable to SCS, the Operating Companies and other Southern subsidiaries. Southern Company Services, Inc., 72 FERC ¶ 61,324 (1995), order in reh'g, 74 FERC ¶ 61,141 (1996).

would hold the beneficial interest in the electric power subject of the arrangement. All Power Marketing opportunities would be associated with one or more of the Operating Companies, which would therefore be credited with all revenues from, and would bear all costs and risks associated with, such transactions.

SCS personnel engaged in the Activities would account for their time through the regular Southern system time accounting system and would thus charge their time to specific ''activity codes'' established for the affected Southern companies. Overheads and ancillary expenses would be similarly charged. The Operating Companies may also engage directly in the Activities for their own account, individually or in cooperation with other Operating Companies, and with or without the assistance of SCS.

The Operating Companies do not anticipate the need for financial support from Southern or independent sources of capital to engage in the Activities. SCS would be indemnified by the Operating Companies for claims or losses that result from its involvement, as agent for the Operating Companies, in the Activities.

It is anticipated that in the ordinary course of business the Operating Companies would take appropriate steps to hedge risk through the purchase of options, puts, futures and other similar risk management measures. In addition, the Operating Companies may offset price risk exposure under a purchase or sale contract through an opposite position to that purchase or sale. Similarly, in a portfolio of purchase and sales contracts, risk may also be limited through an appropriate mix of long-term and short-term contracts. SCS, as agent for the Operating Companies, would negotiate the terms of such instruments and manage overall portfolio risk.

General Public Utilities Corporation (70–8843)

General Public Utilities Corporation (''GPU''), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a declaration under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 thereunder.

GPU proposes to issue and sell for cash from time to time through December 31, 2001 up to $300,000,000 aggregate principal amount of unsecured debentures (the ''Debentures''). The debentures will be issued under an indenture to be entered into with United States Trust Company of New York, as trustee, and will have terms ranging from one year to up to 40 years. In addition, the Debentures may be subject to optional and/or mandatory redemption, in whole or in part, by GPU at par or at various premiums above the principal amount thereof. The Debentures may also be entitled to mandatory or optional sinking fund provisions.

GPU will utilize the net proceeds (after deduction of commissions and expenses) from the sale of the debentures to (a) fund the acquisition of interests, and to make investments, in exempt wholesale generators, foreign utility companies and qualifying facilities, (b) make cash capital contributions to its electric operating subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (''Operating Subsidiaries''), (c) to repay outstanding GPU indebtedness, (d) for other GPU corporate purposes, and (e) reimburse GPU's treasury for funds previously expended for such purposes.

The Operating Subsidiaries will use proceeds of the proposed issuance of Debentures contributed to them (a) to repay outstanding indebtedness, (b) to redeem outstanding senior securities in accordance with the optional redemption provisions thereof or reacquire such securities in open market transactions (c) for construction purposes, (d) for other corporate purposes, and (e) to reimburse their treasuries for funds previously expended for such purposes.

Southwestern Electric Power Company, (70–8847)

Southwestern Electric power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71101, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 54 promulgated thereunder.

SWEPCO proposes, through December 31, 1999, to incur obligations in connection with the issuance by Sabine River Authority of Texas (''Sabine'' or ''Issuer''), in one or more series, of up to $131.7 million aggregate principal amount of Pollution Control Revenue Bonds in connection with the Southwestern Electric Power Company Project. Of this amount, up to $81.7 million aggregate principal amount may be Pollution Control Revenue Refunding Bonds (''Refunding Bonds'') and up to $50 million aggregate principal amount may be new money Revenue Bonds (''New Money Bonds'' and, together with the Refunding Bonds, the ''New Bonds''). The issuance of New Money Bonds may be combined with the issuance of Refunding Bonds.

The purpose of the Refunding Bonds is to reacquire all or a portion of Sabine's $81.7 million of outstanding Series 1986, 8.20% Pollution Control Revenue Refunding Bonds, maturing on July 1, 2014 (''Old Bonds''). The purpose of the New Money Bonds is to reimburse SWEPCO for expenditures that qualify for tax-exempt financing or to provide for current solid waste expenditures.

SWEPCO also seeks authorization to manage interest rate risk or lower its interest costs through the use of forward refinancing techniques and the use of hedging products, including interest rate swaps, forward swaps, caps, collars and floors during the life of the Old Bonds and/or New Bonds. SWEPCO requests authority to enter into the foregoing types of transactions from time-to-time either in connection with the Old Bonds or New Bonds.

It is anticipated that any interest rate swap agreement entered into would provide that redemption, reacquisition or maturation of the corresponding Old Bonds and/or New Bonds would terminate SWEPCO's obligations to the counterparty under the swap agreement for a corresponding notional amount. If an interest rate swap with automatic termination is not available or economically appropriate, SWEPCO will enter into a swap permitting termination at SWEPCO's option and it would exercise such option for a corresponding notional amount upon the redemption, reacquisition or maturation of the corresponding Old Bonds and/or New Bonds. SWEPCO further requests authorization to enter into reverse (or offsetting) interest rate swap agreements, or other contractual arrangements, in order to limit the impact of anticipated movements in interest rates or offset the effect of an existing interest rate swap agreement.

SWEPCO and the Issuer entered into an installment sale agreement (''Sale Agreement'') for the issuance of the Old Bonds. In connection with the issuance of the New Bonds, SWEPCO will amend the Sale Agreement, enter into agreements with substantially the same terms as the Sale Agreement and/or enter into new installment sales agreements (collectively ''Amended Sales Agreements'').

The New Bonds will bear interest at a fixed or floating rate, may be secured with first mortgage bonds and will mature in not more than forty years. The interest rate, redemption provisions and other terms and conditions applicable to

the New Bonds will be determined by negotiations between SWEPCO and one or more investment banking firms or other entities that will purchase or underwrite the New Bonds (''Purchasers'').

SWEPCO anticipates that the New Bonds will be redeemable at its option upon the occurrence of various events specified in the Amended Sales Agreements and the Indentures, which may be amended or supplemented (''Supplemental Indentures''), or a new indenture (''New Indenture''). The New Bonds will be subject to optional redemption with premiums to be determined by negotiations between SWEPCO and the Purchasers and will be subject to mandatory redemption if the interest on the New Bonds become subject to federal income tax.

SWEPCO may obtain a credit enhancement for the New Bonds, which could include bond insurance, a letter of credit or a liquidity facility. SWEPCO anticipates it may be required to provide credit enhancement if it issues floating rate bonds. A premium or fee would be paid for the credit enhancement, which would still result in the net benefit through a reduced interest rate on the New Bonds. SWEPCO will not provide credit enhancement unless it is economically beneficial.

SWEPCO also seeks authority to issue first mortgage bonds as security for the New Bonds, subject to applicable indenture restrictions under its Mortgage Indenture dated February 1, 1940 to the Continental Bank, National Association and M.J. Kruger (''Mortgage Indenture''). The First Mortgage Bonds will be held by the Trustee for the New Bonds for the benefit of the New Bond holders and will not be transferable, except to a successor trustee. The First Mortgage Bonds will be issued in the exact amount and have substantially the same terms as the New Bonds. The Supplemental Indenture or New Indenture for the New Bonds may provide that the New Bonds will cease to be secured by First Mortgage Bonds when all other First Mortgage Bonds have been retired. To the extend payments in respect of the New Bonds are made in accordance with their terms, corresponding payment obligations under the First Mortgage Bonds will be deemed satisfied.

The proceeds of the offering of the New Bonds will be used to redeem the Old Bonds pursuant to the terms of the Indentures (''Redemption'') and reimburse SWEPCO for expenditures made that qualify for tax-exempt financing or to provide for current solid waste expenditures. The proceeds of any offering may also be used to reimburse SWEPCO for Old Bonds previously acquired. Additional funds required to pay for the Redemption and the cost of issuance of the New Bonds will be provided by SWEPCO from internally generated funds and short-term borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13024 Filed 5–22–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting; Agency Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Time Change.

The time for the open meeting scheduled for Thursday, May 23, 1996, at 10:00 a.m., has been changed to 9:30 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 20, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13144 Filed 5–21–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Bethela Capital Corporation (''Bethela''), has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Bethela was licensed by the Small Business Administration on May 9, 1980.

Pursuant to a Final Order dated October 30, 1995, the receivership was terminated. The surrender of the license was accepted on March 20, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 15, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–13067 Filed 5–22–96; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by July 22, 1996.

ADDRESSES: Comments should be sent to the Executive Secretariat, Office of the Secretary, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Expiration Date: August 31, 1996.

Type of Request: Extension for a currently approved information collection.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Departmental officials to review the qualifications of individuals who wish to serve on Department-sponsored advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT's advisory committees were created by statute, and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such statutory membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position, to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Respondents: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Estimated Number of Respondents per Year: 100.

Average Annual Burden per Respondent: 15 minutes.

Estimated Total Burden on Respondents Per Year: 25 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's estimate of the burden of the proposed information collection; and (c) ways to minimize the burden and enhance the quality of the collection.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on May 20, 1996.

Judith Burrell,

Director, Executive Secretariat.

[FR Doc. 96–13036 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Foster, Executive Director of the Port of Oakland, at the following address: Post Office Box 2064, Oakland, California 94604–2064. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 1, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 31, 1996. The following is a brief overview of the impose and use application number AWP–95–06–C–00–OAK.

Level of proposed PFC: $3.00.

Charge effective date: October 1, 1996.

Estimated charge expiration date: December 31, 1996.

Total estimated PFC revenue: $4,138,541.

Brief description of impose and use projects: Seismic Upgrade of Building M101, Construct Second Jetway at the International Arrivals Building, Purchase Two 3,000 Gallon ARFF Trucks, Overlay Runway 27L/9R, Replace Normal Power Breakers in Building M102, and Upgrade M104 Switchgear, Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA. 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on May 3, 1996.

Herman C. Bliss,

Manager, Airports Division, Western Pacific Region.

[FR Doc. 96–13029 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a

PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary Dellapa, Director of the Dade County Aviation Department at the following address: P.O. Box 592075, Miami, Florida 33159.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Plans & Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 15, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Dade County Aviation Department was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 1996.

The following is a brief overview of PFC Application No. 96–02–U–00–MIA.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1996.

Proposed charge expiration date: May 1, 1998.

Total estimated PFC revenue: $42,034,000.

Brief description of proposed project(s): Concourse A Expansion Phase 2. Concourse A Phase 2 Apron & Utilities.

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air taxi and commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dade County Aviation Department.

Issued in Orlando, Florida, on May 15, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–13028 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL and Use the Revenue From a PFC at the Palm Beach International Airport, West Palm Beach, FL and at the North County General Aviation Airport, Jupiter, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida and use the revenue from a PFC at the Palm Beach International Airport, West Palm Beach, Florida and at the North County General Aviation Airport, Jupiter, Florida under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce V. Pelly, Director of Airports of the Palm Beach County Department of Airports at the following address: Palm Beach International Airport, Building 846, West Palm Beach, Florida 33406–1491.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County Department of Airports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airport Plans & Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6583, extension 27. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida and use the revenue from a PFC at the Palm Beach International Airport, West Palm Beach, Florida and at the North County General Aviation Airport, Jupiter, Florida under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 15, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Palm Beach County Department of Airports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 29, 1996.

The following is a brief overview of PFC Application No. 96–02–C–00–PBI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1996.

Proposed charge expiration date: November 15, 2002.

Total estimated PFC revenue: $26,135,564.

Brief description of proposed project(s):

West Enplane Roadway Baggage Improvements
Land Acquisition (Project 95B)
Install ILS, VOR and DME at North County Airport
Land Acquisition (Project 96B)
ARFF Vehicle Replacement
Land Acquisition (Development)
Construct Outer Perimeter Road South Phase 2
Reconstruct Aprons B, D and E
Itnermodal Transportation Study

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air Taxi and Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office

listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, Florida on May 15, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 96–13027 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at San Angelo Mathis Field, San Angelo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comment must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arboth A. Rylant, Airport Manager of San Angelo Mathis Field at the following address: Mr. Arboth A. Rylant, Airport Manager, San Angelo Mathis Field, 8618 Terminal Circle, San Angelo, Texas 76904.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of Federal Aviation Regulations (14 CFR part 158).

On May 8, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 23, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Charge effective date: May 1, 1993.

Proposed charge expiration date: March 1, 1998.

Total estimated PFC revenue: $770,752.00.

PFC application number: 96–02–U–00–SJT.

Brief description of proposed project(s):

Projects to Use PFC's

Perimeter Road,

Extend Runway 36 and Taxiway P (Phase I),

Replace/Relocate ALS Runway 3, and

Security Upgrade.

Proposed class or classes of air carriers to be exempted from collecting PFC's: Air Charter operators who operated aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at San Angelo Mathis Field.

Issued in Fort Worth, Texas on May 8, 1996.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 96–13031 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket No. M–018; OMB NO: 2133–0504]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime, Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5755 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, The State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0504.

Form Number: None.

Expiration Date of Approval: June 30, 1996.

Summary of Collection of Information: 46 U.S.C. 1295g states that excess or surplus property can only be made available to approved maritime training institutions for specific purposes. The information collected is a statement of need/justification for the desired property.

Need and Use of the Information: Information collection provides a justification and the intended use of the property by the requester and permits determination of compliance with the statutory requirements.

Description of Respondents: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Annual Responses: 120.

Annual Burden: 120 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington,

D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–12879 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

[Docket S–937]

American President Lines, Ltd.; Notice of Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application dated May 9, 1996, requests a change in an existing waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB–417.

APL has authority, under a previous section 804 waiver, dated August 10, 1994, to charter slots on Transportacion Maritima Mexicana S.A. de C.V. (TMM) vessels that serve between Mexico, California and the Far East. While the preponderant use by APL of those slots has been for Mexico-Far East cargoes, APL has been using its allocation of slots on TMM vessels to carry a small volume of U.S. commerce cargo between California and the Far East, pursuant to the 804 waiver.

In its May 9, 1996, application, APL states that TMM is in the process of restructuring its Far East service to add larger and faster ships, a result that significantly increases the capacity of the service. The new service, which TMM has already commenced, will be operated with six vessels with an effective capacity of up to 2,800 TEUs on an itinerary Mazanillo-San Pedro-Ykohama-Kobe-Hong Kong-Koahsiung-Kobe-Yokohama-San Pedro-Manzanillo.

APL states that due to the increased TMM vessel capacity, it is applying for an amendment to its August 10, 1994, waiver to increase from 50 FEU to 195 FEU, both inbound and outbound, the number of weekly slots on the TMM vessels that APL may use for the carriage of U.S. commerce cargo.

APL indicates that its primary focus in a slot charter arrangement with TMM has been and continues to be the Mexico-Asia market. APL points out that direct service to Mexico ports is a far more efficient and less costly way for APL to serve the Mexico-Asia market than intermodally by a combination of all-water service between California and Asia and relay overland service between California and Mexico. However, APL states that the Mexico/Asia market is not large enough for APL to dedicate its own vessels to that trade. Accordingly, APL asserts that the charter of slots on TMM vessels is a necessary vehicle for APL to provide direct all-water service to the Mexico market.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on May 30, 1996. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: May 16, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–12878 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

War Risk Insurance

The Office of Inspector General of the Department of Transportation conducted an audit of the Maritime Administration's (MARAD) Financial Statement as of September 30, 1994 (Report No: AD–MA–5–006). Section II: AUDIT REPORT stated that MARAD needed to clarify the participating shipowners' responsibility for losses under the Title XII war risk interim binder program. MARAD had not specifically stated in program documents that losses incurred during the 30 day binder period would be fully recovered through the premiums assessed to participating shipowners.

The purpose of this Notice is to clarify the arrangements for the funding of losses under the binder program, if and when it is ever activated. It remains the intent of this program that all losses will be paid through the assessment of premiums to the shipowners enrolled in the program. Rates will be fixed promptly upon the activation of the program. Should there be any claims and any shortfall in the Title XII War Risk Insurance Fund, additional premiums would be assessed to enrolled shipowners on a mutual basis. Such assessments will be based on this formula: Each participating shipowner's values for its vessels (numerator) *over* total stated values for all vessels (denominator) *times* the shortfall. This assessment procedure will be incorporated on revised Form MA–942, which may be obtained from MARAD or from the American War Risk Agency, which is incorporated by reference in 46 CFR 308.3(a), as revised (61 FR 1130; Jan. 16, 1996). For further information contact: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

By order of the Maritime Administrator.

Dated: May 16, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–13037 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Cir. 570, 1995—Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Change of Name; Prudential Reinsurance Co.

Prudential Reinsurance Company, a Delaware corporation, has formally changed its name to Everest Reinsurance Company, effective April 2, 1996. The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34446, June 30, 1995.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 to Title 31 of the United States Code, to Everest Reinsurance Company, Dover, Delaware. This new certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $44,245,000 established for the Company as of July 1, 1995, remains unchanged until June 30, 1996.

Cerificates of Authority expire on June 30, each year, unless revoked prior to that dated. The Certificates are subject to subsequent annual renewal as

long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, at page 34446 to reflect this change.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury. Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6765.

Dated: May 15, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–12990 Filed 5–22–96; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, P.L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning revisions to Form 1040, U.S. Individual Income Tax Return, and Schedules C, EIC, and F.

DATES: Written comments should be received on or before July 22, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Number: 1040.

Abstract: Form 1040 and its schedules are used by individuals to report their income subject to tax and compute their correct tax liability. The information is used to verify that the items reported on the forms and schedules are correct, and is also for general statistical use.

Current Actions:

Changes to Form 1040

1. Lines 60b, c, and d, requesting direct deposit information, were added to page 2. This will increase the number of taxpayers electing direct deposit, and relieve taxpayers from the burden of having to attach Form 8888, Direct Deposit of Refund. Form 8888 will become obsolete.

2. Line 33b, which had indicated that the taxpayer could be claimed as a dependent on someone else's return, was deleted to make room for the direct deposit information.

3. Line 38 was revised and lines 39 and 40 were deleted. In addition to making room for the direct deposit lines, this change reduces taxpayer burden by removing checkboxes and entry spaces.

4. Line 62b was added to facilitate processing of returns when payment is made using Form 1040–V.

5. Line 49, recapture taxes, was deleted due to low usage. Those taxes are now reported on line 51, total tax.

6. Most of the page references to the instructions were deleted because information will not be on the same pages in the instructions sent to some taxpayers. Instead, page references are indicated on pages 2 and 3 of the instructions.

7. The checkbox on line 52, indicating Form 1099 Federal Income Tax Withheld was included on that line, was deleted to reduce taxpayer burden.

8. The exemption area on Form 1040, page 1, was revised to reduce taxpayer burden. Columns 3 and 4 on line 6c, which were for the dependent's relationship, and the number of months lived in the taxpayer's home, were deleted. Line 6c, column 2, was revised to reflect section 742(c)(2)(B) of PL 103–465 which, for 1996, exempts taxpayers who have a dependent born after November 30, 1996, from the requirement to report the dependent's social security number. The entry spaces to the right of line 6c were revised and line 6d, which dealt with pre-1985 custody agreements, was deleted.

Changes to Schedule C

Questions G and H that were on page 1 of the 1995 schedule were moved to Part III, Cost of Goods Sold (new lines 33 and 34) and the remaining questions were relettered. This will reduce taxpayer burden because only those taxpayers with inventory will have to consider these questions.

Changes to Schedule EIC

The line 4 text on page 2 was revised to reflect section 742(c)(2)(B) of Pub. L. 103–465 which, for 1996, exempts taxpayers claiming the EIC from reporting a social security number for an individual born after November 30, 1996. Changes to Schedule F

Line 14 was revised by deleting ''Attach Form 8645'' and adding ''(see page F–4).'' Form 8645 will be obsolete for 1996. The instructions for line 14 were expanded to explain that an approved conservation plan is required to take this deduction.

The instructions will be revised to reflect the changes made to Form 1040 and its schedules.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 66,244,569.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,128,204,754.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: May 15, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–13032 Filed 5–22–96; 8:45 am]

BILLING CODE 4830–01–U

federal register

Thursday
May 23, 1996

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.
Restructuring of Cylinder Specifications Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, and 178

[Docket HM–220B; Admt. Nos. 171–142, 173–250, and 178–114]

RIN 2137–AC81

Restructuring of Cylinder Specifications Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) by restructuring the cylinder specification requirements in its regulations on Specifications for packagings. The intended effect of this rulemaking is to reduce the size of the HMR through consolidation of repetitive requirements and other formatting changes. This action eliminates approximately 45 pages of regulations from the Code of Federal Regulations without substantially changing the regulatory requirements or affecting safety. It is in response to President Clinton's March 4, 1995 Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations. RSPA is also making corresponding reference changes throughout the HMR.

DATES: *Effective date:* October 1, 1996.

Incorporation by reference date: The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. RSPA has performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106 and 107) in response to the President's directive.

The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations. On April 4, 1995, RSPA published in the Federal Register (60 FR 17049) a Notice of Public Meetings and request for comment on its hazardous materials safety program. Comments were requested on ways to improve the HMR and the kind and quality of services its customers want. RSPA held seven public meetings and received over 50 comments in response to the notice. On July 28, 1995, RSPA published a second Notice of Public Meetings in the Federal Register (60 FR 38888) which announced five more public meetings that were held from September 1995 through January 1996.

One area identified by RSPA in its review of the HMR was the need to reform the cylinder specifications in 49 CFR Part 178. On March 4, 1996 (61 FR 8328), RSPA proposed to amend the HMR by restructuring the cylinder specifications in Part 178. RSPA estimates that by consolidating duplicative requirements in 23 cylinder specifications, that it will eliminate at least 45 pages from the CFR. By reformatting the specifications, RSPA proposes to eliminate over 450 sections from Part 178 of Title 49. The combined effect of these changes will be to make the regulations shorter and easier to use and help RSPA move toward its goal of issuing the HMR in one volume of the Code of Federal Regulations, rather than two.

This rulemaking also serves as the model for a comprehensive rulemaking, being developed by RSPA in cooperation with the Compressed Gas Association, for which a notice of proposed rulemaking is anticipated later this year. In this latter rulemaking, under Docket HM–220, RSPA intends to propose substantive changes to the cylinder specifications to accommodate contemporary manufacturing techniques, eliminate obsolete requirements, contemporize regulatory language and make safety enhancements to the regulations.

II. Summary of Amendments

RSPA received approximately 10 comments to the NPRM. All of the comments were in support of the proposal. One commenter stated that the changes proposed under Docket HM–220B are a valuable contribution to simplification of the cylinder specifications. Another commenter stated that it strongly supports the amendments proposed in Docket HM–220B to simplify and update existing regulations and to reduce the size of the HMR by consolidation of the text. Several commenters also raised concerns that were beyond the scope of the proposed rule; however, they may be considered in future rulemakings.

In this final rule, RSPA is revising the HMR by restructuring the cylinder specification requirements in 49 CFR Part 178. This restructuring of the cylinder specifications: (1) consolidates similar sections; (2) reformats subpart C of Part 178 for consistency with the format of the rest of Part 178; and (3) revises section references throughout the HMR to correspond to the revised sections. RSPA intends to streamline the cylinder specification requirements without making substantive changes to them.

Sections that have been consolidated are the sections of each specification addressing compliance, authorized inspectors, duties of the inspector, the inspector's report, record retention, defects, safety relief devices, and marking. These sections have been consolidated into a new § 178.35. Section 178.35, entitled ''General requirements for specification cylinders'' prescribes the general requirements for all DOT specification cylinders. However, because some of the duties of the inspector and marking requirements are specific to individual cylinder designs, some specifications have additional marking and inspector requirements remaining in their sections.

For the inspector's report, RSPA has adopted the inspector report formats in Compressed Gas Association (CGA) Pamphlet C–11, ''Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture.'' The report formats can be modified to represent the inspection of specific cylinders. Additional information may be required as stated in each specification. In order to help facilitate transition into the new reports, RSPA is allowing inspectors an additional year, until October 1, 1997, to use the old report format required by the HMR.

Those sections remaining in each specification have been consolidated into a single section. Presently, each specification is set forth in approximately 22 different sections. Under this final rule, there is only one section for each specification. For example, Specification 3B was set forth in 24 sections, §§ 178.38 through 178.38–23. In this final rule, Specification 3B is set forth in one section, § 178.38, and some of its requirements are relocated in § 178.35. Sixteen of the old sections are converted to paragraphs (a) through (o) of § 178.38. As an aid to the reader, the regulatory

text in this final rule includes all of the requirements for cylinders in the current Subpart C of part 178, even though not all of the requirements are changed.

In response to comments, RSPA has made several changes to the original proposal. RSPA has corrected the minimum service pressure for the DOT Specification 4E cylinder to 225 psig. In the NPRM, RSPA incorrectly proposed the minimum service pressure for the 4E cylinder at 250 psig.

In the NPRM, RSPA proposed to revise the marking requirements for the DOT Specification 39 to indicate that the highest monetary penalty under the Federal hazardous materials transportation law was $500,000 and not $25,000. One commenter, citing the costs of updating silk-screens, requested that RSPA not adopt this change. RSPA has not adopted this commenter's suggestion because the marking should accurately reflect the requirements of the Federal hazardous materials transportation law. However, RSPA is adding a ''grandfather'' provision for those containers marked prior to October 1, 1996.

In § 178.35(b)(2), RSPA is adding a reference to the DOT Specification 3E. RSPA had inadvertently left reference of that specification out of that section.

The purpose of this rulemaking action is to reduce the size of the HMR and make it easier to use. It is not intended to make substantive changes to regulatory requirements and no adverse impacts are anticipated on the regulated community.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

The Federal hazardous materials transportation law provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. 49 U.S.C. 5125(b)(2). That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996. This final rule deals with the packaging of compressed gases. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This final rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor carrier safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 173, and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7(a)(3), in the table, under the entry ''Aluminum Standards and Data, Seventh Edition, June 1982'', the section reference ''178.65–5'' is revised to read ''178.46 and 178.65'', under the entry *National Institute of Standards and Technology* the entry for ''USDC, NBS Handbook H–28'' is amended by adding a section reference to read ''; 178.46'', under the entry *American Society for Testing and Materials* the entries for ASTM A 240–82, and ASTM B 557–84 are revised and two new entries are added in appropriate alpha-numerical order, and under the entry *Compressed Gas Association, Inc.*, the entries for CGA Pamphlet C–3 and CGA Pamphlet C–12 are revised and a new entry is added in alpha-numerical order to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * *	* *
American Society for Testing and Materials	
* * * * *	* *
ASTM A 240–82 Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Fusion-Welded Unfired Pressure Vessels, Revision A.	178.57; 178.358; 179.100; 179.200; 179.201; 179.220; 179.400.
* * * * *	* *
ASTM B 557–84 Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products	178.46; 178.251.
* * * * *	* *
ASTM E 112–88 Standard Test Methods for Determining Average Grain Size	178.44.
ASTM E 290–92 Standard Test Method for Semi-Guided Bend Test for Ductility of Metallic Materials.	178.46.
* * * * *	* *
Compressed Gas Association, Inc.,	
* * * * *	* *
CGA Pamphlet C–3, Standards for Welding and Brazing on Thinned Walled Containers, 1975	178.47; 178.50; 178.51; 178.53; 178.54; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68.
* * * * *	* *
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 1993.	178.35.
CGA Pamphlet C–12, Qualification Procedure for Acetylene Cylinder Design, 1994	173.34; 173.303; 178.59; 178.60.
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PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.34 [Amended]

4. In § 173.34, paragraph (h) is amended by:

a. Removing, in the first sentence, the phrase ''§§ 178.36–9(a), 178.37–9(a), 178.38–9(a), and 178.40–9(a)'' and replacing it with the phrase ''§ 178.36(e), 178.37(e), 178.38(e), and 178.40(e)''.

b. Removing, in the fourth sentence, the phrase ''§ 178.36–9(a), § 178.37–9(a), § 178.38–9(a), or § 178.40–9(a)'' and replacing it with the phrase ''§ 178.36(e), 178.37(e), 178.38(e), or 178.40(e)''.

§ 173.316 [Amended]

5. In § 173.316, in paragraph (a)(8), the section reference ''178.57–20(a)(4)'' is revised to read ''178.35'' and in paragraph (c)(3)(ii) the section reference ''178.57–20'' is revised to read ''178.35''.

PART 178—SPECIFICATIONS FOR PACKAGINGS

6. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. Subpart C of Part 178 is revised to read as follows:

Subpart C—Specifications for Cylinders

Sec.
178.35 General requirements for specification cylinders.
178.36 Specification 3A and 3AX seamless steel cylinders.
178.37 Specification 3AA and 3AAX seamless steel cylinders.
178.38 Specification 3B seamless steel cylinders.
178.39 Specification 3BN seamless nickel cylinders.
178.42 Specification 3E seamless steel cylinders.
178.44 Specification 3HT seamless steel cylinders for aircraft use.
178.45 Specification 3T seamless steel cylinders.
178.46 Specification 3AL seamless aluminum cylinders.
178.47 Specification 4DS welded stainless steel cylinders for aircraft use.
178.50 Specification 4B welded or brazed steel cylinders.
178.51 Specification 4BA welded or brazed steel cylinders.
178.53 Specification 4D welded steel cylinders for aircraft use.
178.55 Specification 4B240ET welded or brazed cylinders.
178.56 Specification 4AA480 welded steel cylinders.
178.57 Specification 4L welded insulated cylinders.
178.58 Specification 4DA welded steel cylinders for aircraft use.
178.59 Specification 8 steel cylinders with porous fillings for acetylene.
178.60 Specification 8AL steel cylinders with porous fillings for acetylene.
178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.
178.65 Specification 39 non-reusable (non-refillable) cylinders.
178.68 Specification 4E welded aluminum cylinders.

Subpart C—Specifications for Cylinders

§ 178.35 General requirements for specification cylinders.

(a) *Compliance.* Compliance with the requirements of this subpart is required in all details.

(b) *Inspections and analyses.* Chemical analyses and tests as specified must be made within the United States unless otherwise approved in writing by the Associate Administrator, in accordance with § 173.300b of this subchapter. Inspections and verifications must be performed by—

(1) An independent inspection agency approved in writing by the Associate Administrator, in accordance with § 173.300a of this subchapter; or

(2) For DOT Specifications 3B, 3BN, 3E, 4B, 4BA, 4D (water capacity less than 1,100 cubic inches), 4B240ET, 4AA480, 4L, 8, 8AL, 4BW, 39 (marked service pressure 900 p.s.i.g. or lower) and 4E manufactured in the United States, a competent inspector of the manufacturer.

(c) *Duties of inspector.* The inspector shall determine that each cylinder made is in conformance with the applicable specification. Except as otherwise specified in the applicable specification, the inspector shall perform the following:

(1) Inspect all material and reject any not meeting applicable requirements. For cylinders made by the billet-piercing process, billets must be inspected and shown to be free from pipe, cracks, excessive segregation and other injurious defects after parting or, when applicable, after nick and cold break.

(2) Verify the material of construction meets the requirements of the applicable specification by—

(i) Making a chemical analysis of each heat of material;

(ii) Obtaining a certified chemical analysis from the material manufacturer for each heat of material (a ladle analysis is acceptable); or

(iii) If an analysis is not provided for each heat of material by the material manufacturer, by making a check analysis of a sample from each coil, sheet, or tube.

(3) Verify compliance of cylinders with the applicable specification by—

(i) Verifying identification of material is proper;

(ii) Inspecting the inside of the cylinder before closing in ends;

(iii) Verifying that the heat treatment is proper;

(iv) Obtaining samples for all tests and check chemical analyses;

(v) Witnessing all tests;

(vi) Verify threads by gauge;

(vii) Reporting volumetric capacity and tare weight (see report form) and minimum thickness of wall noted; and

(viii) Verifying that each cylinder is marked in accordance with the applicable specification.

(4) Furnish complete test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.

(d) *Defects.* A cylinder may not be constructed of material with seams, cracks, laminations, or other injurious defects.

(e) *Safety devices.* Safety devices and protection for valves, safety devices, and other connections, if applied, must be as required or authorized by the appropriate specification, and as required in §§ 173.34 and 173.301 of this subchapter.

(f) *Markings.* Markings on a DOT Specification cylinder must conform to applicable requirements.

(1) Each cylinder must be marked with the following information:

(i) The DOT specification marking must appear first, followed immediately by the service pressure. For example, DOT–3A1800.

(ii) The serial number must be placed just below or immediately following the DOT specification marking.

(iii) A symbol (letters) must be placed just below, immediately before or following the serial number. Other variations in sequence of markings are authorized only when necessitated by a lack of space. The symbol and numbers must be those of the manufacturer. The symbol must be registered with the Associate Administrator; duplications are not authorized.

(iv) The inspector's official mark and date of test (such as 5–95 for May 1995) must be placed near the serial number. This information must be placed so that dates of subsequent tests can be easily added. An example of the markings prescribed in this paragraph (f)(1) is as follows:

DOT–3A1800
1234
XY
AB 5–95

Or;

DOT–3A1800–1234–XY
AB 5–95

Where:

DOT–3A=specification number
1800=service pressure
1234=serial number
xy=symbol of manufacturer
AB=inspector's mark
5–95=date of test

(2) Additional required marking must be applied to the cylinder as follows:

(i) The word ''spun'' or ''plug'' must be placed near the DOT specification marking when an end closure in the finished cylinder has been welded by the spinning process, or effected by plugging.

(ii) As prescribed in specification 3HT (§ 178.44) or 3T (§ 178.45), if applicable.

(3) Marking exceptions.

(i) A DOT 3E cylinder is not required to be marked with the inspector mark.

(ii) An identifying lot number may be marked on the cylinder in place of a serial number for cylinders not over 2 inches outside diameter or for cylinders with a volumetric capacity not exceeding 60 cubic inches. Each lot shall not have over 500 cylinders.

(4) Unless otherwise specified in the applicable specification, the markings on each cylinder must be stamped plainly and permanently on the shoulder, top head, or neck.

(5) The size of each marking must be at least 0.25 inch or as space permits.

(6) Other markings are authorized provided they are made in low stress areas other than the side wall and are not of a size and depth that will create harmful stress concentrations. Such marks may not conflict with any DOT required markings.

(g) *Inspector's report.* Each inspector shall prepare a report containing, at a minimum, the applicable information listed in CGA Pamphlet C–11 or, until October 1, 1997, in accordance with the applicable test report requirements of this subchapter in effect on September 30, 1996. Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory.

(h) *Report retention.* The manufacturer of the cylinders shall retain the reports required by this subpart for 15 years from the original test date of the cylinder.

§ 178.36 Specification 3A and 3AX seamless steel cylinders.

(a) *Type size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3A cylinder is a seamless steel cylinder with a water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AX is a seamless stainless steel cylinder with a water capacity not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test may not exceed 80

percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum longitudinal tensile stress due to bending, the following formula must be used:

$S=Mc/I$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$S=A_1P/A_2$

where:

S=tensile stress—p.s.i.;
M=bending moment-inch pounds—$(wl^2)/8$;
w=weight per inch of cylinder filled with water;
l=length of cylinder-inches;
c=radius (D)/(2) of cylinder-inches;
I=moment of inertia—$0.04909\ (D^4-d^4)$ inches fourth;
D=outside diameter-inches;
d=inside diameter-inches;
A_1=internal area in cross section of cylinder-square inches;
A_2=area of metal in cross section of cylinder-square inches;
P=hydrostatic test pressure-p.s.i.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorous, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method, except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedures.

(2) As permitted in paragraph (d) of this section.

(3) Cylinders used solely in anhydrous ammonia service may have a ½ inch diameter bar welded within their concave bottoms.

(f) *Wall thickness.* For cylinders with service pressure less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches outside diameter. Wall stress calculation must be made by using the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinder must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable methods, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus the test pressure cannot be maintained the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent, volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅔ times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times thickness with width not over 6 times thickness is authorized when cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the

gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation at least 20 percent for a 2-inch gauge length or 10 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance, the flattening test is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder that is leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

(a) *Type, size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3AA cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AAX cylinder is a seamless steel cylinder with a water capacity of not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test pressure may not exceed 80 percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum tensile stress due to bending, the following formula must be used:

$$S=Mc/I$$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$$S=A^1P/A^2$$

Where:

S=tensile stress-p.s.i.;

M=bending moment-inch pounds $(wl^2)/8$;

w=weight per inch of cylinder filled with water;

l=length of cylinder-inches;

c=radius (D)/(2) of cylinder-inches;

I=moment of inertia-0.04909 $(D^4 - d^4)$ inches fourth;

D=outside diameter-inches;

d=inside diameter-inches;

A^1=internal area in cross section of cylinder-square inches;

A^2=area of metal in cross section of cylinder-square inches;

P=hydrostatic test pressure-p.s.i.

(b) *Authorized steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. A heat of steel made under the specifications in Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded. When a carbon-boron steel is used, a hardenability test must be performed on the first and last ingot of each heat of steel. The results of this test must be recorded on the Record of Chemical Analysis of Material for Cylinders required by § 178.35. This hardness test must be made 5/16-inch from the quenched end of the Jominy quench bar and the hardness must be at least Rc 33 and no more than Rc 53. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	4130X (percent) (see Note 1)	NE–8630 (percent) (see Note 1)	9115 (percent) (see Note 1)	9125 (percent) (see Note 1)	Carbon-boron (percent)	Inter- mediate manganese (percent)
Carbon	0.25/0.35	0.28/0.33	0.10/0.20	0.20/0.30	0.27–0.37	0.40 max.

TABLE 1.—AUTHORIZED MATERIALS—Continued

Designation	4130X (percent) (see Note 1)	NE–8630 (percent) (see Note 1)	9115 (percent) (see Note 1)	9125 (percent) (see Note 1)	Carbon-boron (percent)	Inter- mediate manganese (percent)
Manganese	0.40/0.90	0.70/0.90	0.50/0.75	0.50/0.75	0.80–1.40	1.35/1.65.
Phosphorus	0.04 max	0.04 max	0.04 max	0.04 max	0.035 max	0.04 max.
Sulfur	0.05 max	0.04 max	0.04 max	0.04 max	0.045 max	0.05 max.
Silicon	0.15/0.35	0.20/0.35	0.60/0.90	0.60/0.90	0.3 max.	0.10/0.30.
Chromium	0.80/1.10	0.40/0.60	0.50/0.65	0.50/0.65.		
Molybdenum	0.15/0.25	0.15/0.25				
Zirconium			0.05/0.15	0.05/0.15		
Nickel		0.40/0.70.				
Boron					0.0005/0.003.	

NOTE 1: This designation may not be restrictive and the commercial steel is limited in analysis as shown in this Table.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.02	0.03
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 0.60 to 1.15 incl	0.04	0.04
	Over 1.15 to 2.50 incl	0.05	0.05
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	To 1.00 incl	.03	.03
Chromium	To 0.90 incl	.03	.03
	0.90 to 2.90 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40	.02	.02
Zirconium	All ranges	.01	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defects is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The thickness of each cylinder must conform to the following:

(1) For cylinders with a service pressure of less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder with an outside diameter of over 5 inches.

(2) For cylinders with service pressure of 900 p.s.i. or more the minimum wall must be such that the wall stress at the minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraphs (k) and (l) of this section and must be not over 70,000 p.s.i.

(3) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat treated prior to tests. Heat treatment of cylinders of the authorized analyses must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium except as provided in paragraph (g)(5) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750 °F.

(3) All steels must be tempered at a temperature most suitable for that steel.

(4) The minimum tempering temperature may not be less than 1000 °F except as noted in paragraph (1)(vi) of this section.

(5) Steel 4130X may be normalized at a temperature of 1650 °F instead of being quenched and cylinders so normalized need not be tempered.

(6) Intermediate manganese steels may be tempered at temperatures not less than 1150 °F., and after heat treating each cylinder must be submitted to a magnetic test to detect the presence of quenching cracks. Cracked cylinders must be rejected and destroyed.

(7) Except as otherwise provided in paragraph (g)(6) of this section, all cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle, dye penetrant or ultrasonic method to detect the presence of quenching cracks. Any cylinder designed to the requirements for specification 3AA and found to have a quenching crack must be rejected and may not be requalified. Cylinders designed to the requirements for specification 3AAX and found to have cracks must have cracks removed to sound metal by mechanical means. Such specification 3AAX cylinders will be acceptable if the repaired area is subsequently examined to assure no defect, and it is determined that design thickness requirements are met.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅔ times the service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out of each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with width not over 6 times thickness when the thickness of the cylinder wall is not over 3/16 inch.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* An acceptable result for physical and flattening tests is elongation at least 20 percent for 2 inches of gauge length or at least 10 percent in other cases. Flattening is required without cracking to 6 times the wall thickness of the cylinder.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture. Pressure, approximately the same as but no less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(1) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(2) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(3) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provision of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.38 Specification 3B seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3B cylinder is seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 to not over 500 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses to be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The wall stress may not exceed 24,000 pounds per square inch. The minimum wall thickness is 0.090 inch for any cylinder with an outside diameter of 6 inches. Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=at least two times service pressure or 450 pounds per square inch, whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads, conforming to the following, are required on all openings:

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit, and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Cylinders must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) Each cylinder; to at least 2 times service pressure; or

(ii) 1 cylinder out of each lot of 200 or less; to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defect.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches; or a gauge length of 2 inches with a width of not over 1½ inches; or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of

physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2-inch gauge length or 10 percent in other cases and yield strength not over 73 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(o) *Marking.* Markings may be stamped into the sidewalls of cylinders having a service pressure of 150 psi if all of the following conditions are met:

(1) Wall stress at test pressure may not exceed 24,000 psi.

(2) Minimum wall thickness must be not less than 0.090 inch.

(3) Depth of stamping must be no greater than 15 percent of the minimum wall thickness, but may not exceed 0.015 inch.

(4) Maximum outside diameter of cylinder may not exceed 5 inches.

(5) Carbon content of cylinder may not exceed 0.25 percent. If the carbon content exceeds 0.25 percent, the complete cylinder must be normalized after stamping.

(6) Stamping must be adjacent to the top head.

§ 178.39 Specification 3BN seamless nickel cylinders.

(a) *Type, size and service pressure.* A DOT 3BN cylinder is a seamless nickel cylinder with a water capacity (nominal) not over 125 pounds water capacity (nominal) and a service pressure at least 150 to not over 500 pounds per square inch.

(b) *Nickel.* The percentage of nickel plus cobalt must be at least 99.0 percent.

(c) *Identification of material.* The material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Cylinders closed in by spinning process are not authorized.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except that welding is authorized for the attachment of neckrings and footrings which are nonpressure parts, and only to the tops and bottoms of cylinders. Neckrings and footrings must be of weldable material, the carbon content of which may not exceed 0.25 percent. Nickel welding rod must be used.

(f) *Wall thickness.* The wall stress may not exceed 15,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches in outside diameter. Wall stress calculation must be made by using the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;

P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;

D=outside diameter in inches;

d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings:

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, to be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer

to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 2 times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield point not over 50 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases and a yield point not over 50 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is not authorized.

§ 178.42 Specification 3E seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3E cylinder is a seamless steel cylinder with an outside diameter not greater than 2 inches nominal, a length less than 2 feet and a service pressure of 1,800 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of steel.* Materials must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured by best appliances and methods. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The thickness of the spun bottom is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thickness must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(f) *Hydrostatic test.* Cylinders must be tested as follows:

(1) One cylinder out of each lot of 500 or less must be subjected to a hydrostatic pressure of 6,000 pounds per square inch or higher.

(2) The cylinder referred to in paragraph (f)(1) of this section must burst at a pressure higher than 6,000 pounds per square inch without fragmenting or otherwise showing lack of ductility, or must hold a pressure of 12,000 pounds per square inch for 30 seconds without bursting. In which case, it must be subjected to a flattening test without cracking to six times wall thickness between knife edges, wedge shaped 60 degree angle, rounded out to a ½ inch radius. The inspector's report must be suitably changed to show results of latter alternate and flattening test.

(3) Other cylinders must be examined under pressure of at least 3,000 pounds per square inch and not to exceed 4,500 pounds per square inch and show no defect. Cylinders tested at a pressure in excess of 3,600 pounds per square inch must burst at a pressure higher than 7,500 pounds per square inch when tested as specified in paragraph (f)(2) of this section. The pressure must be maintained for at least 30 seconds and

sufficiently longer to ensure complete examination.

(g) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) A pressure, approximately the same as but not less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than 3/4 inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Accept as provided in paragraph (h) of this section, a cylinder must be rejected if there is any leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer shall design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(h) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (g) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(i) *Marking.* Markings required by § 178.35 must be stamped plainly and permanently on the shoulder, top head, neck or sidewall of each cylinder.

§ 178.44 Specification 3HT seamless steel cylinders for aircraft use.

(a) *Type, size and service pressure.* A DOT 3HT cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 150 pounds and a service pressure of at least 900 pounds per square inch.

(b) *Authorized steel.* Open hearth or electric furnace steel of uniform quality must be used. A heat of steel made under the specifications listed in Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded. Grain size 6 or finer according to ASTM E 112. Steel of the following chemical analysis is authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	AISI 4130 (percent)
Carbon	0.28/0.33
Manganese	0.40/0.60
Phosphorus	0.040 maximum
Sulfur	0.040 maximum
Silicon	0.15/0.35
Chromium	0.80/1.10
Molybdenum	0.18/0.25

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method. Steel stamping of heat identifications may not be made in any area which will eventually become the side wall of the cylinder. Depth of stamping may not encroach upon the minimum prescribed wall thickness of the cylinder.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished container appreciably. The general surface finish may not exceed a roughness of 250 RMS. Individual irregularities such as draw marks, scratches, pits, etc., should be held to a minimum consistent with good high stress pressure vessel manufacturing practices. If the cylinder is not originally free of such defects or does not meet the finish requirements, the surface may be machined or otherwise treated to eliminate these

defects. The point of closure of cylinders closed by spinning may not be less than two times the prescribed wall thickness of the cylindrical shell. The cylinder end contour must be hemispherical or ellipsoidal with a ratio of major-to-minor axis not exceeding two to one and with the concave side to pressure.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited, except that welding by spinning is permitted to close the bottom of spun cylinders. Machining or grinding to produce proper surface finish at point of closure is required.

(f) *Wall thickness.* (1) Minimum wall thickness for any cylinder must be 0.050 inch. The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 75 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraph (m) of this section and may not be over 105,000 psi.

(2) Calculations must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress in pounds per square inch;

P=Minimum test pressure prescribed for water jacket test;

D=Outside diameter in inches;

d=Inside diameter in inches.

(3) Wall thickness of hemispherical bottoms only permitted to 90 percent of minimum wall thickness of cylinder sidewall but may not be less than 0.050 inch. In all other cases, thickness to be no less than prescribed minimum wall.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heated prior to tests. Heat treatment of the cylinders of the authorized analysis must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750 °F.

(3) The steel must be tempered at a temperature most suitable for the particular steel analysis but not less than 850 °F.

(4) All cylinders must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quenching crack must be rejected and may not be requalified.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings:

(1) Threads must be clean cut, even, without cracks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for National Gas Tapered Thread (NGT) as required by American Standard Compressed Gas Cylinder Valve Outlet and Inlet Connections.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear stress of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. Pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent of 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, which ever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅝ times service pressure.

(j) *Cycling tests.* Prior to the initial shipment of any specific cylinder design, cyclic pressurization tests must have been performed on at least three representative samples without failure as follows:

(1) Pressurization must be performed hydrostatically between approximately zero psig and the service pressure at a rate not in excess of 10 cycles per minute. Adequate recording instrumentation must be provided if equipment is to be left unattended for periods of time.

(2) Tests prescribed in paragraph (j)(1) of this section must be repeated on one random sample out of each lot of cylinders. The cylinder may then be subjected to a burst test.

(3) A lot is defined as a group of cylinders fabricated from the same heat of steel, manufactured by the same process and heat treated in the same equipment under the same conditions of time, temperature, and atmosphere, and may not exceed a quantity of 200 cylinders.

(4) All cylinders used in cycling tests must be destroyed.

(k) *Burst test.* One cylinder taken at random out of each lot of cylinders must be hydrostatically tested to destruction.

(l) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(m) *Physical tests.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) Test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of cylinders.

(2) Specimens must conform to the following:

(i) A gauge length of at least 24 times the thickness with a width not over six times the thickness. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with the record of physical tests detailed information in regard to such specimens.

(ii) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy,

the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Magnetic particle inspection.* Inspection must be performed on the inside of each container before closing and externally on each finished container after heat treatment. Evidence of discontinuities, which in the opinion of a qualified inspector may appreciably weaken or decrease the durability of the cylinder, must be cause for rejection.

(o) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by dry gas or dry air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but not less than service pressure, must be applied to one side of the finished bottom over an area of at least 1⁄16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (q) of this section, a cylinder must be rejected if there is leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(p) *Acceptable results of tests.* Results of the flattening test, physical tests, burst test, and cycling test must conform to the following:

(1) Flattening required without cracking to ten times the wall thickness of the cylinder.

(2) Physical tests:

(i) An elongation of at least 6 percent for a gauge length of 24 times the wall thickness.

(ii) The tensile strength may not exceed 165,000 p.s.i.

(3) The burst pressure must be at least ⅔ times the test pressure.

(4) Cycling-at least 10,000 pressurizations.

(q) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. For each cylinder subjected to reheat treatment during original manufacture, sidewall measurements must be made to verify that the minimum sidewall thickness meets specification requirements after the final heat treatment.

(r) *Marking.* (1) Cylinders must be marked by low stress type steel stamping in an area and to a depth which will insure that the wall thickness measured from the root of the stamping to the interior surface is equal to or greater than the minimum prescribed wall thickness. Stamping must be permanent and legible. Stamping on side wall not authorized.

(2) The rejection elastic expansion (REE), in cubic centimeters (cc), must be marked on the cylinder near the date of test. The REE for a cylinder is 1.05 times its original elastic expansion.

(3) Name plates are authorized, provided that they can be permanently and securely attached to the cylinder. Attachment by either brazing or welding is not permitted. Attachment by soldering is permitted provided steel temperature does not exceed 500 °F.

(s) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report must indicate the rejection elastic expansion (REE), in cubic centimeters (cc).

§ 178.45 Specification 3T seamless steel cylinder.

(a) *Type, size, and service pressure.* A DOT 3T cylinder is a seamless steel cylinder with a minimum water capacity of 1,000 pounds and a minimum service pressure of 1,800 p.s.i. Each cylinder must have integrally formed heads concave to pressure at both ends. The inside head shape must be hemispherical, ellipsoidal in which the major axis is two times the minor axis, or a dished shape falling within these two limits. Permanent closures formed by spinning are prohibited.

(b) *Material, steel.* Only open hearth, basic oxygen, or electric furnace process steel of uniform quality is authorized. The steel analysis must conform to the following:

ANALYSIS TOLERANCES

Element	Ladle analysis	Check Analysis	
		Under	Over
Carbon	0.35 to 0.50	0.03	0.04
Manganese	0.75 to 1.05	0.04	0.04
Phosphorus (max)	0.035	.....	0.01
Sulphur (max)	0.04	.....	0.01
Silicon	0.15 to 0.35	0.02	0.03
Chromium	0.80 to 1.15	0.05	0.05
Molybdenum	0.15 to 0.25	0.02	0.02

(1) A heat of steel made under the specifications in the table in this paragraph (b), the ladle analysis of which is slightly out of the specified range, is acceptable if satisfactory in all other aspects. However, the check analysis tolerances shown in the table in this paragraph (b) may not be exceeded except as approved by the Department.

(2) Material with seams, cracks, laminations, or other injurious defects is not permitted.

(3) Material used must be identified by any suitable method.

(c) *Manufacture.* General manufacturing requirements are as follows:

(1) Surface finish must be uniform and reasonably smooth.

(2) Inside surfaces must be clean, dry, and free of loose particles.

(3) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(4) If the cylinder surface is not originally free from the defects, the surface may be machined or otherwise treated to eliminate these defects provided the minimum wall thickness is maintained.

(5) Welding or brazing on a cylinder is not permitted.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure does not exceed 67 percent of the minimum tensile strength of the steel as determined by the physical tests required in paragraphs (j) and (k) of this section. A wall stress of more than 90,500 p.s.i. is not permitted. The minimum wall thickness for any cylinder may not be less than 0.225 inch.

(1) Calculation of the stress for cylinders must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=Wall stress in pounds per square inch;

P=Minimum test pressure, at least ⅝ service pressure;

D=Outside diameter in inches;

d=Inside diameter in inches.

(2) Each cylinder must meet the following additional requirement which assumes a cylinder horizontally supported at its two ends and uniformly loaded over its entire length. This load consists of the weight per inch of length of the straight cylindrical portion filled with water compressed to the specified test pressure. The wall thickness must be increased when necessary to meet this additional requirement:

(i) The sum of two times the maximum tensile stress in the bottom fibers due to bending (see paragraph (d)(2)(ii) of this section), plus the maximum tensile stress in the same fibers due to hydrostatic testing (see paragraph (d)(2)(iii) of this section) may not exceed 80 percent of the minimum yield strength of the steel at this maximum stress.

(ii) The following formula must be used to calculate the maximum tensile stress due to bending:

$S=Mc/I$

Where:

S=Tensile stress in pounds per square inch;

M=Bending moment in inch-pounds ($wl^2/8$);

I=Moment of inertia—0.04909 (D^4-d^4) in inches fourth;

c=Radius (D/2) of cylinder in inches;

w=Weight per inch of cylinder filled with water;

l=Length of cylinder in inches;

D=Outside diameter in inches;

d=Inside diameter in inches.

(iii) The following formula must be used to calculate the maximum longitudinal tensile stress due to hydrostatic test pressure:

$S=A_1P/A_2$

Where:

S=Tensile stress in pounds per square inch;

A_1=Internal area in cross section of cylinder in square inches;

P=Hydrostatic test pressure in pounds per square, inch;

A_2=Area of metal in cross section of cylinder in square inches.

(e) *Heat treatment.* Each completed cylinder must be uniformly and properly heat treated prior to testing, as follows:

(1) Each cylinder must be heated and held at the proper temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder and then quenched in a suitable liquid medium having a cooling rate not in excess of 80 percent of water. The steel temperature on quenching must be that recommended for the steel analysis, but it must never exceed 1750 °F.

(2) After quenching, each cylinder must be reheated to a temperature below the transformation range but not less than 1050 °F., and must be held at this temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder. Each cylinder must then be cooled under conditions recommended for the steel.

(f) *Openings.* Openings in cylinders must comply with the following:

(1) Openings are permitted on heads only.

(2) The size of any centered opening in a head may not exceed one half the outside diameter of the cylinder.

(3) Openings in a head must have ligaments between openings of at least three times the average of their hole diameter. No off-center opening may exceed 2.625 inches in diameter.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must be in compliance with the following:

(i) Each thread must be clean cut, even, without any checks, and to gauge.

(ii) Taper threads, when used, must be the American Standard Pipe thread (NPT) type and must be in compliance with the requirements of NBS Handbook H–28, Part II, Section VII.

(iii) Taper threads conforming to National Gas Taper thread (NGT) standards must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(iv) Straight threads conforming with National Gas Straight thread (NGS) standards are authorized. These threads must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(g) *Hydrostatic test.* Each cylinder must be tested at an internal pressure by the water jacket method or other suitable method, conforming to the following requirements:

(1) The testing apparatus must be operated in a manner that will obtain accurate data. Any pressure gauge used must permit reading to an accuracy of one percent. Any expansion gauge used must permit reading of the total expansion to an accuracy of one percent.

(2) Any internal pressure applied to the cylinder after heat treatment and before the official test may not exceed 90 percent of the test pressure.

(3) The pressure must be maintained sufficiently long to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds.

(4) If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test must be repeated at a pressure increased by 10 percent or 100 p.s.i., whichever is lower or, the cylinder must be reheat treated.

(5) Permanent volumetric expansion of the cylinder may not exceed 10 percent of its total volumetric expansion at the required test pressure.

(6) Each cylinder must be tested to at least ⅝ times its service pressure.

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard A–388–67 using the angle beam technique. The equipment used must be calibrated to detect a notch equal to five percent of the design minimum wall thickness. Any discontinuity indication greater than that produced by the five percent notch must be cause for rejection of the cylinder unless the discontinuity is repaired within the requirements of this specification.

(i) *Basic requirements for tension and Charpy impact tests.* Cylinders must be subjected to a tension and Charpy impact as follows:

(1) When the cylinders are heat treated in a batch furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each batch. The lot size represented by these tests may not exceed 200 cylinders.

(2) When the cylinders are heat treated in a continuous furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each four hours or less of production. However, in no case may a test lot based on this production period exceed 200 cylinders.

(3) Each specimen for the tension and Charpy impact tests must be taken from the side wall of a cylinder or from a ring which has been heat treated with the finished cylinders of which the specimens must be representative. The axis of the specimens must be parallel to the axis of the cylinder. Each cylinder or ring specimen for test must be of the same diameter, thickness, and metal as the finished cylinders they represent. A test ring must be at least 24 inches long with ends covered during the heat treatment process so as to simulate the heat treatment process of the finished cylinders it represents.

(4) A test cylinder or test ring need represent only one of the heats in a furnace batch provided the other heats in the batch have previously been tested and have passed the tests and that such tests do not represent more than 200 cylinders from any one heat.

(5) The test results must conform to the requirements specified in paragraphs (j) and (k) of this section.

(6) When the test results do not conform to the requirements specified, the cylinders represented by the tests may be reheat treated and the tests repeated. Paragraph (i)(5) of this section applies to any retesting.

(j) *Basic conditions for acceptable physical testing.* The following criteria must be followed to obtain acceptable physical test results:

(1) Each tension specimen must have a gauge length of two inches with a width not exceeding one and one-half inches. Except for the grip ends, the specimen may not be flattened. The grip ends may be flattened to within one inch of each end of the reduced section.

(2) A specimen may not be heated after heat treatment specified in paragraph (d) of this section.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gage length.

(i) This yield strength must be determined by the ''offset'' method or the ''extension under load'' method described in ASTM Standard E8.

(ii) For the ''extension under load'' method, the total strain (or extension under load) corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gage length under appropriate load and adding thereto 0.2 percent of the gage length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. However, when the degree of accuracy of this method is questionable the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set with the specimen under a stress of 12,000 p.s.i. and the strain indicator reading set at the calculated corresponding strain.

(iv) The cross-head speed of the testing machine may not exceed ⅛ inch per minute during the determination of yield strength.

(4) Each impact specimen must be Charpy V-notch type size 10 mm x 10 mm taken in accordance with paragraph 11 of ASTM Standard A–333–67. When a reduced size specimen is used, it must be the largest size obtainable.

(k) *Acceptable physical test results.* Results of physical tests must conform to the following:

(1) The tensile strength may not exceed 155,000 p.s.i.

(2) The elongation must be at least 16 percent for a two-inch gage length.

(3) The Charpy V-notch impact properties for the three impact specimens which must be tested at 0 °F may not be less than the values shown as follows:

Size of specimen (mm)	Average value for acceptance (3 specimens)	Minimum value (1 specimen only of the 3)
10.0x10.0	25.0 ft. lbs.	20.0 ft. lbs.
10.0x7.5	21.0 ft. lbs.	17.0 ft. lbs.
10.0x5.0	17.0 ft. lbs.	14.0 ft. lbs.

(4) After the final heat treatment, each vessel must be hardness tested on the cylindrical section. The tensile strength equivalent of the hardness number obtained may not be more than 165,000 p.s.i. (Rc 36). When the result of a hardness test exceeds the maximum permitted, two or more retests may be made; however, the hardness number obtained in each retest may not exceed the maximum permitted.

(l) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. However, each reheat treated cylinder must subsequently pass all the prescribed tests. Repair by welding is not authorized.

(m) *Markings.* Marking must be done by stamping into the metal of the cylinder. All markings must be legible and located on a shoulder.

(n) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report for the physical test report, must indicate the average value for three specimens and the minimum value for one specimen for each lot number.

§ 178.46 Specification 3AL seamless aluminum cylinders.

(a) *Size and service pressure.* A DOT 3AL cylinder is a seamless aluminum cylinder with a maximum water capacity of 1000 pounds and minimum service pressure of 150 psig.

(b) *Authorized material and identification of material.* The material of construction must meet the following conditions:

(1) Starting stock must be cast stock or traceable to cast stock.

(2) Material with seams, cracks, laminations, or other defects likely to weaken the finished cylinder may not be used.

(3) Material must be identified by a suitable method that will identify the alloy, the aluminum producer's cast number, the solution heat treat batch number and the lot number.

(4) The material must be of uniform quality. Only the following heat treatable aluminum alloys in Table 1 and 2 are permitted as follows:

TABLE 1.—CHEMICAL COMPOSITION LIMITS

[Chemical composition (in weight percent)]

Aluminum Assoc. alloy designation No.	Si	Fe	Cu	Mn	Mg	Cr	Zn	Ti	Pb	Bi	Other [1]		A1
											Each	Total	
6351	0.7–1.3	0.50	0.10	0.40–0.80	0.40–0.80	.....	0.20	0.20	0.01	0.01	0.05	0.15	Remainder.
6061	0.40–0.80	0.70	0.15–0.40	0.15	0.80–1.20	0.04–0.35	0.25	0.15	0.01	0.01	0.05	0.15	Remainder.

[1] Analysis is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If, however, the presence of other elements is suspected to be, or in the course of routine analysis is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amounts specified. (Aluminum Association Standards and Data.)

TABLE 2.—MECHANICAL PROPERTY LIMITS

Alloy and temper	Tensile strength—PSI		Elongation—percent minimum for 2″ or 4D [1] size specimen
	Ultimate—minimum	Yield—minimum	
6351–T6	42,000	37,000	[2]14
6061–T6	38,000	35,000	[2]14

[1] ''D'' represents specimen diameters. When the cylinder wall is greater than 3/16 inch thick, a retest without reheat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.

[2] When cylinder wall is not over 3/16-inch thick, 10 percent elongation is authorized when using a 24t x 6t size test specimen.

(5) All starting stock must be 100 percent ultrasonically inspected, along the length at right angles to the central axis from two positions at 90° to one another. The equipment and continuous scanning procedure must be capable of detecting and rejecting internal defects such as cracks which have an ultrasonic response greater than that of a calibration block with a 5/64-inch diameter flat bottomed hole.

(6) Cast stock must have uniform equiaxed grain structure not to exceed 500 microns maximum.

(7) Any starting stock not complying with the provisions of paragraphs (b)(1) through (b)(6) of this section must be rejected.

(c) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) Cylinder shells must be manufactured by the backward extrusion method and have a cleanliness level adequate to ensure proper inspection. No fissure or other defect is acceptable that is likely to weaken the finished cylinder below the design strength requirements. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise conditioned to eliminate these defects.

(2) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided that—

(i) Any areas of deviation are accompanied by an increase in base thickness;

(ii) All radii of merging surfaces are equal to or greater than the knuckle radius;

(iii) Each design has been qualified by successfully passing the cycling tests in this paragraph (c); and

(iv) Detailed specifications of the base design are available to the inspector.

(3) For free standing cylinders, the base thickness must be at least two times the minimum wall thickness along the line of contact between the cylinder base and the floor when the cylinders are in the vertical position.

(4) Welding or brazing is prohibited.

(5) Each new design and any significant change to any acceptable design must be qualified for production by testing prototype samples as follows:

(i) Three samples must be subjected to 100,000 pressure reversal cycles between zero and service pressure or 10,000 pressure reversal cycles between zero and test pressure, at a rate not in excess of 10 cycles per minute without failure.

(ii) Three samples must be pressurized to destruction and failure may not occur at less than 2.5 times the marked cylinder service pressure. Each cylinder must remain in one piece. Failure must initiate in the cylinder sidewall in a longitudinal direction. Rate of pressurization may not exceed 200 psi per second.

(6) In this specification ''significant change'' means a 10 percent or greater change in cylinder wall thickness, service pressure, or diameter; a 30 percent or greater change in water capacity or base thickness; any change in material; over 100 percent increase in size of openings; or any change in the number of openings.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure will not exceed 80 percent of the minimum yield strength nor exceed 67 percent of the minimum ultimate tensile strength as verified by physical tests in paragraph (i) of this section. The minimum wall thickness for any cylinder with an outside diameter greater than 5 inches must be 0.125 inch. Calculations must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress in pounds per square inch;

P=Prescribed minimum test pressure in pounds per square inch (see paragraph (g) of this section);

D=Outside diameter in inches; and

d=Inside diameter in inches.

(e) *Openings.* Openings must comply with the following requirements:

(1) Openings are permitted in heads only.

(2) The size of any centered opening in a head may not exceed one-half the outside diameter of the cylinder.

(3) Other openings are permitted in the head of a cylinder if:

(i) Each opening does not exceed 2.625 inches in diameter, or one-half the outside diameter of the cylinder; whichever is less;

(ii) Each opening is separated from each other by a ligament; and

(iii) Each ligament which separates two openings must be at least three times the average of the diameters of the two openings.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must comply with the following:

(i) Each thread must be clean cut, even, without checks, and to gauge.

(ii) Taper threads, when used, must conform to one of the following:

(A) American Standard Pipe Thread (NPT) type, conforming to the requirements of Federal Standard H–28, Section 7;

(B) National Gas Taper Thread (NGT) type, conforming to the requirements of Federal Standard H–28, Sections 7 and 9; or

(C) Other taper threads conforming to other standards may be used provided the length is not less than that specified for NPT threads.

(iii) Straight threads, when used, must conform to one of the following:

(A) National Gas Straight Thread (NGS) type, conforming to the requirements of Federal Standard H–28, Sections 7 and 9;

(B) Unified Thread (UN) type, conforming to the requirements of Federal Standard H–28, Section 2;

(C) Controlled Radius Root Thread (UN) type, conforming to the requirements of Federal Standard H–28, Section 4; or

(D) Other straight threads conforming to other recognized standards may be used provided that the requirements in paragraph (e)(5)(iv) of this section are met.

(iv) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28, Appendix A5, Section 3.

(f) *Heat treatment.* Prior to any test, all cylinders must be subjected to a solution heat treatment and aging treatment appropriate for the aluminum alloy used.

(g) *Hydrostatic test.* Each cylinder must be subjected to an internal test pressure using the water jacket equipment and method or other suitable equipment and method and comply with the following requirements:

(1) The testing apparatus must be operated in a manner so as to obtain accurate data. The pressure gauge used must permit reading to an accuracy of one percent. The expansion gauge must permit reading the total expansion to an accuracy of either one percent or 0.1 cubic centimeter.

(2) The test pressure must be maintained for a sufficient period of time to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds. If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is lower. If the test apparatus again fails to maintain the test pressure, the cylinder being tested must be rejected. Any internal pressure applied to the cylinder before any official test may not exceed 90 percent of the test pressure.

(3) The minimum test pressure is the greatest of the following:

(i) 450 psi regardless of service pressure;

(ii) Two times the service pressure for cylinders having service pressure less than 500 psi; or

(iii) Five-thirds times the service pressure for cylinders having a service pressure of at least 500 psi.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(h) *Flattening test.* One cylinder taken at random out of each lot must be subjected to a flattening test as follows:

(1) The test must be between knife edges, wedge shaped, having a 60° included angle, and rounded in accordance with the following table. The longitudinal axis of the cylinder must be at an angle 90° to the knife edges during the test. The flattening test table is as follows:

TABLE 3.—FLATTENING TEST TABLE

Cylinder wall thickness in inches	Radius in inches
Under .150	.500
.150 to .249	.875
.250 to .349	1.500
.350 to .449	2.125
.450 to .549	2.750
.550 to .649	3.500
.650 to .749	4.125

(2) An alternate bend test in accordance with ASTM E 290 using a mandrel diameter not more than 6 times the wall thickness is authorized to qualify lots that fail the flattening test of this section without reheat treatment. If used, this test must be performed on two samples from one cylinder taken at random out of each lot of 200 cylinders or less.

(3) Each test cylinder must withstand flattening to nine times the wall thickness without cracking. When the alternate bend test is used, the test specimens must remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall until the interior edges are at a distance apart not greater than the diameter of the mandrel.

(i) *Mechanical properties test.* Two test specimens cut from one cylinder representing each lot of 200 cylinders or less must be subjected to the mechanical properties test, as follows:

(1) The results of the test must conform to at least the minimum acceptable mechanical property limits for aluminum alloys as specified in paragraph (b) of this section.

(2) Specimens must be 4D bar or gauge length 2 inches with width not over 1½ inch taken in the direction of extrusion approximately 180° from each other; provided that gauge length at least 24 times thickness with width not over 6 times thickness is authorized, when cylinder wall is not over 3⁄16 inch thick. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When the size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When such specimens are used, the inspector's report must show that the specimens were so taken and prepared. Heating of specimens for any purpose is forbidden.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard B–557.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 10,000,000 psi. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 6,000 psi, the strain indicator reading

being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(j) *Rejected cylinder.* Reheat treatment of rejected cylinders is authorized one time. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable.

(k) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall:

(1) Verify compliance with the provisions of paragraph (b) of this section by:

(i) Performing or witnessing the performance of the chemical analyses on each melt or cast lot or other unit of starting material; or

(ii) Obtaining a certified chemical analysis from the material or cylinder manufacturer for each melt, or cast of material; or

(iii) Obtaining a certified check analysis on one cylinder out of each lot of 200 cylinders or less, if a certificate containing data to indicate compliance with the material specification is obtained.

(2) The inspector shall verify ultrasonic inspection of all material by inspection or by obtaining the material producer's certificate of ultrasonic inspection. Ultrasonic inspection must be performed or verified as having been performed in accordance with paragraph (c) of this section.

(3) The inspector must also determine that each cylinder complies with this specification by:

(i) Selecting the samples for check analyses performed by other than the material producer;

(ii) Verifying that the prescribed minimum thickness was met by measuring or witnessing the measurement of the wall thickness; and

(iii) Verifying that the identification of material is proper.

(4) Prior to initial production of any design or design change, verify that the design qualification tests prescribed in paragraph (c)(6) of this section have been performed with acceptable results.

(l) *Definitions.* (1) In this specification, a ''lot'' means a group of cylinders successively produced having the same:

(i) Size and configuration;

(ii) Specified material of construction;

(iii) Process of manufacture and heat treatment;

(iv) Equipment of manufacture and heat treatment; and

(v) Conditions of time, temperature and atmosphere during heat treatment.

(2) In no case may the lot size exceed 200 cylinders, but any cylinder processed for use in the required destructive physical testing need not be counted as being one of the 200.

(m) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include the alloy designation, and applicable information on iron, titanium, zinc, magnesium and any other applicable element used in the construction of the cylinder.

§ 178.47 Specification 4DS welded stainless steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DS cylinder is either a welded stainless steel sphere (two seamless hemispheres) or circumferreentially welded cylinder both with a water capacity of not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Types 304, 321 and 347 stainless steel are authorized with proper welding procedure. A heat of steel made under the specifications in Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded, except as approved by Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

	Stainless steels		
	304 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00
Phosphorus (max)	.030	.030	.030
Sulphur (max)	.030	.030	.030
Silicon (max)	.75	.75	.75
Nickel	8.0/11.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	17.0/20.0	17.0/20.0
Molybdenum			
Titanium		(1)	
Columbium			(2)

[1] Titanium may not be more than 5C and not more than 0.60%.
[2] Columbium may not be less than 10C and not more than 1.0%.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
Manganese	Over 1.15 to 2.50 incl	0.05	0.05
Phosphorus[1]	All ranges	.....	.01
Sulphur	All ranges	.....	.01
Silicon	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15

TABLE 2.—CHECK ANALYSIS TOLERANCES—Continued

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Chromium	Over 15.00 to 20.00 incl	.20	.20
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

[1]Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably, a reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. All seams of the sphere or cylinder must be fusion welded. Seams must be of the butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Attachments.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable stainless steel in accordance with paragraph (b) of this section.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not be over 60,000 psi. A minimum wall thickness of 0.040 inch is required for any diameter container. Calculations must be made by the following formulas:

(1) Calculation for sphere must be made by the formula:

$S=PD/4tE$

Where:

S=Wall stress in pounds per square inch;

P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;

D=Outside diameter in inches;

t=Minimum wall thickness in inches;

E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat zones which zone must extend a distance of 6 times wall thickness from center of weld); E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=Wall stress in pounds per square inch;

P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;

D=Outside diameter in inches;

d=Inside diameter in inches.

(g) *Heat treatment.* The seamless hemispheres and cylinders may be stress relieved or annealed for forming. Welded container must be stress relieved at a temperature of 775° F +/− 25° after process treatment and before hydrostatic test.

(h) *Openings in container.* Openings must comply with the following:

(1) Each opening in the container must be provided with a fitting, boss or pad of weldable stainless steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Process treatment.* Each container must be hydraulically pressurized in a water jacket to at least 100 percent, but not more than 110 percent, of the test pressure and maintained at this pressure for a minimum of 3 minutes. Total and permanent expansion must be recorded and included in the inspector's report.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(5) Container must then be inspected. Any wall thickness lower than that required by paragraph (f) of this section must be cause for rejection. Bulges and cracks must be cause for rejection. Welded joint defects exceeding requirements of paragraph (k) of this section must be cause for rejection.

(k) *Radiographic inspection.* Radiographic inspection is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the container diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container is cause for rejection. Radiographic inspection must be performed subsequent to the hydrostatic test.

(l) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. Rupture pressure must be included as part of the inspector's report.

(m) *Flattening test.* A flattening test must be performed as follows:

(1) For spheres the test must be at the weld between parallel steel plates on a press with welded seam at right angles to the plates. Test one sphere taken at random out of each lot of 200 or less after the hydrostatic test. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) For cylinders the test must be between knife edges, wedge shaped, 60° angle, rounded to ½-inch radius. Test one cylinder taken at random out of each lot of 200 or less, after the hydrostatic test.

(n) *Acceptable results for flattening and burst tests.* Acceptable results for flattening and burst tests are as follows:

(1) Flattening required to 50 percent of the original outside diameter without cracking.

(2) Burst pressure must be at least 3 times the service pressure.

(o) *Rejected containers.* Repair of welded seams by welding prior to process treatment is authorized. Subsequent thereto, containers must be heat treated and pass all prescribed tests.

(p) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector must verify that all tests are conducted at temperatures between 60 °F and 90 °F.

(q) *Marking.* Markings must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.50 Specification 4B welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4B is a welded or brazed steel cylinder with longitudinal seams that are forged lap-welded or brazed and with water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inch long must be protected by footrings. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. Seams must be made as follows:

(1) *Welded or brazed circumferential seams.* Heads attached by brazing must have a driving fit with the shell, unless the shell is crimped, swedged, or curled over the skirt or flange of the head, and be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of shell must be at least four times the thickness of shell metal.

(2) *Longitudinal seams in shells.* Longitudinal seams must be forged lap welded, by copper brazing, by copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper, 95 percent minimum; Silicon, 1.5 percent to 3.85 percent; Manganese, 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1000° F. When brazed, the plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or electric spot-welding; brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side.

(e) *Welding or brazing.* Only the attachment of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders by welding or brazing is authorized. Such attachments and the portion of the container to which they are attached must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(f) *Wall thickness.* The wall thickness of the cylinder must comply with the following requirements:

(1) For cylinders with outside diameters over 6 inches the minimum wall thickness must be 0.090 inch. In any case, the minimum wall thickness must be such that calculated wall stress at minimum test pressure (paragraph (i)(4) of this section) may not exceed the following values:

(i) 24,000 pounds per square inch for cylinders without longitudinal seam.

(ii) 22,800 pounds per square inch for cylinders having copper brazed or silver alloy brazed longitudinal seam.

(iii) 18,000 pounds per square inch for cylinders having forged lapped welded longitudinal seam.

(2) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;

P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;

D=outside diameter in inches;

d=inside diameter in inches.

(g) *Heat treatment.* Cylinder body and heads, formed by drawing or pressing, must be uniformly and properly heat treated prior to tests.

(h) *Opening in cylinders.* Openings in cylinders must conform to the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by brazing or by welding or by threads. Fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(iv) A brass fitting may be brazed to the steel boss or flange on cylinders used as component parts of hand fire extinguishers.

(2) The closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Flattening test.* After the hydrostatic test, a flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, a flattening test is not required.

(2) When cylinders are constructed of lap welded pipe, flattening test is required, without cracking, to 6 times the wall thickness. In such case, the rings (crop ends) cut from each end of pipe, must be tested with the weld 45° or less from the point of greatest stress. If a ring fails, another from the same end of pipe may be tested.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinder. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On side wall adjacent to top head for side walls which are not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder, constituting an integral and non-pressure part of the cylinder.

(4) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1⁄16-inch thick and must be attached by welding, or by brazing. The brazing rod must melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.51 Specification 4BA welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4BA cylinder is a cylinder, either spherical or cylindrical in shape, with a water capacity of 1,000 pounds or less and a service pressure of at least 225 and not over 500 pounds per square inch. Closures made by the spinning process are not authorized.

(1) Spherical type cylinders must be made from two seamless hemispheres joined by the welding of one circumferential seam.

(2) Cylindrical type cylinders must be of circumferentially welded or brazed construction.

(b) *Steel.* The steel used in the construction of the cylinder must be as specified in Table 1 of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(1) Seams must be made as follows:

(i) Minimum thickness of heads and bottoms must be not less than 90 percent of the required thickness of the side wall.

(ii) Circumferential seams must be made by welding or by brazing. Heads must be attached by brazing and must have a driving fit with the shell, unless the shell is crimped, swedged or curled

over the skirt or flange of the head and must be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of the shell must be at least four times the thickness of shell metal.

(iii) Longitudinal seams in shells must be made by copper brazing, copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper 95 percent minimum, Silicon 1.5 percent to 3.85 percent, Manganese 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1,000 °F. The plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or by electric spot-welding. Brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side. Strength of longitudinal seam: Copper brazed longitudinal seam must have strength at least 3½ times the strength of the steel wall.

(2) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding and brazing.* Only the welding or brazing of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130× steel which may be used with proper welding procedure.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must meet the following conditions:

(1) For any cylinder with an outside diameter of greater than 6 inches, the minimum wall thickness is 0.078 inch. In any case the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure may not exceed the lesser value of any of the following:

(i) The value shown in Table I of Appendix A to this part, for the particular material under consideration;

(ii) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section;

(iii) 35,000 pounds per square inch; or

(iv) Further provided that wall stress for cylinders having copper brazed longitudinal seams may not exceed 95 percent of any of the above values. Measured wall thickness may not include galvanizing or other protective coating.

(2) Cylinders that are cylindrical in shape must have the wall stress calculated by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) Cylinders that are spherical in shape must have the wall stress calculated by the formula:

$$S=PD/4tE$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(4) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

(g) *Heat treatment.* Cylinders must be heat treated in accordance with the following requirements:

(1) Each cylinder must be uniformly and properly heat treated prior to test by the applicable method shown in Table I of Appendix A to this Part. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations, but may be done before, during or after the brazing operations.

(2) Heat treatment is not required after the welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following requirements:

(1) Any opening must be placed on other than a cylindrical surface.

(2) Each opening in a spherical type cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(3) Each opening in a cylindrical type cylinder must be provided with a fitting, boss, or pad, securely attached to container by brazing or by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof having passed the hydrostatic test and heat-treated as required, taken at random out of each lot of 200 or less. Physical tests for spheres are required on 2 specimens cut from flat representative sample plates of the same heat taken at random from the steel used to produce the spheres. This flat steel from which 2 specimens are to be cut must receive the same heat treatment as the spheres themselves. Sample plates must be taken from each lot of 200 or less spheres.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load''), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least 20 percent in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens, and by 1 in other cases, for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Except for brazed seams, welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that in no case must it be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On side wall adjacent to top head for side walls not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder constituting an integral and non-pressure part of the cylinder.

(4) On a plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16 inch thick and must be attached by welding, or by brazing at a temperature of at least 1100 °F., throughout all edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.53 Specification 4D welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4D cylinder is a welded steel sphere (two seamless hemispheres) or circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 300 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth or electric steel of uniform and weldable quality must be used. Content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050, except that the following steels commercially known as 4130X and Type 304, 316, 321, and 347 stainless steels may be used with proper welding procedure. A heat of steel made under Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded, except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—4130X STEEL

4130X	Percent
Carbon	0.25/0.35.
Manganese	0.40/0.60.
Phosphorus	0.04 max.
Sulphur	0.05 max
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.
Zirconium	None.
Nickel	None.

TABLE 2.—AUTHORIZED STAINLESS STEELS

	Stainless steels			
	304 (percent)	316 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00	2.00
Phosphorus (max)	.030	.045	.030	.030
Sulphur (max)	.030	.030	.030	.030
Silicon (max)	.75	1.00	.75	.75
Nickel	8.0/11.0	10.0/14.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	16.0/18.0	17.0/20.0	17.0/20.0
Molybdenum	.....	2.0/3.0	.....	.....
Titanium	.....	.....	(1)	.....
Columbium	.....	.....	.....	(2)

1 Titanium may not be less than 5C and not more than 0.60%.
2 Columbium may not be less than 10C and not more than 1.0%.

TABLE 3.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 1.15 to 2.50 incl	.05	.05
Phosphorus 1	All ranges	.....	.01
Sulphur	All ranges	.....	.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
	Over 15.00 to 20.00 incl	.20	.20
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02
	Over 1.75 to 3.0 incl	.10	.10
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

1 Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Wall thickness.* The wall stress at the minimum test pressure may not exceed 24,000 pounds per square inch, except where steels commercially known as 4130X, types 304, 316, 321, and 347 stainless steels are used, stress at the test pressures may not exceed 37,000 pounds per square inch. The minimum wall thickness for any container having a capacity of 1,100 cubic inches or less is 0.04 inch. The minimum wall thickness for any container having a capacity in excess of 1,100 cubic inches is 0.095 inch. Calculations must be done by the following:

(1) Calculation for a ''sphere'' must be made by the formula:

$S=PD/4tE$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^{T12})$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(f) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(g) *Openings in container.* Openings in cylinders must comply with the following:

(1) Each opening in the container, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the container by brazing or by welding or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and calculated shear strength of at least 10 times the test pressure of the container. Gaskets, adequate to prevent leakage, are required.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit a reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Containers must be tested as follows:

(i) Each container to at least 2 times service pressure; or

(ii) One container out of each lot of 200 or less to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defects.

(i) *Flattening test for spheres and cylinders.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between parallel steel plates on a press with a welded seam at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) One cylinder taken at random out of each lot of 200 or less must be subjected to a flattening test, as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(j) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) Physical test for spheres are required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates must be taken for each lot of 200 or less spheres.

(2) Specimens for spheres must have a gauge length 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a wall is not over 3⁄16 inch thick.

(3) Physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(4) Specimens for cylinders must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section. Heating of the specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases. Flattening is required to 50 percent of the original outside diameter without cracking.

(l) *Rejected cylinders.* Reheat-treatment is authorized for rejected cylinders. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(m) *Marking.* Marking on each container by stamping plainly and permanently are only authorized where the metal is at least 0.09 inch thick, or on a metal nameplate permanently secured to the container by means other than soft solder, or by means that would not reduce the wall thickness.

§ 178.55 Specification 4B240ET welded or brazed cylinders.

(a) *Type, spinning process, size and service pressure.* A DOT 4B240ET cylinder is a brazed type cylinder made from electric resistance welded tubing. The maximum water capacity of this cylinder is 12 pounds or 333 cubic inches and the service must be 240 pounds per square inch. The maximum outside diameter of the shell must be

five inches and maximum length of the shell is 21 inches. Cylinders closed in by a spinning process are authorized.

(b) *Steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. Plain carbon steel content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulfur, 0.050. The addition of other elements for alloying effect is prohibited.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Heads may be attached to shells by lap brazing or may be formed integrally. The thickness of the bottom of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell. Such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and the floor when the cylinder is in a vertical position. Seams must conform to the following:

(1) Circumferential seams must be by brazing only. Heads must be attached to shells by the lap brazing method and must overlap not less than four times the wall thickness. Brazing material must have a melting point of not less than 1000° F. Heads must have a driving fit with the shell unless the shell is crimped, swedged, or curled over the skirt or flange of the head and be thoroughly brazed until complete penetration of the joint by the brazing material is secured. Brazed joints may be repaired by brazing.

(2) Longitudinal seams in shell must be by electric resistance welded joints only. No repairs to longitudinal joints is permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding or brazing.* Only the attachment, by welding or brazing, to the tops and bottoms of cylinders of neckrings, footrings, handles, bosses, pads, and valve protection rings is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* The wall stress must be at least two times the service pressure and may not exceed 18,000 pounds per square inch. The minimum wall thickness is 0.044 inch. Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=2 times service pressure;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests. Cylinders with integral formed heads or bases must be subjected to a normalizing operation. Normalizing and brazing operations may be combined, provided the operation is carried out at a temperature in excess of the upper critical temperature of the steel.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the cylinder by brazing or by welding or by threads. A fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis, except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) Each 1000 cylinders or less successively produced each day must constitute a lot. One cylinder must be selected from each lot and hydrostatically tested to destruction. If this cylinder bursts below five times the service pressure, then two additional cylinders must be selected and subjected to this test. If either of these cylinders fails by bursting below five times the service pressure then the entire lot must be rejected. All cylinders constituting a lot must be of identical size, construction heat-treatment, finish, and quality.

(j) *Flattening test.* Following the hydrostatic test, one cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test that is between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less in the case of cylinders of capacity greater than 86 cubic inches and out of each lot of 500 or less for cylinders having a capacity of 86 cubic inches or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Acceptable results for the physical and flattening tests are an elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance the flattening test is required, without cracking, to six times the wall thickness with a weld 90° from the direction of the applied load. Two rings cut from the ends of length of pipe used in production of a lot may be used for the flattening test provided the rings accompany the lot which they represent in all thermal processing operations. At least one of the rings must pass the flattening test.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, cylinders which are leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Repairs of rejected cylinders is authorized. Cylinders that are leaking must be rejected, except that:

(1) Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping, and plugging.

(2) Brazed joints may be rebrazed.

(3) Subsequent to the operations noted in paragraphs (n)(1) and (n)(2) of this section, acceptable cylinders must pass all prescribed tests.

(o) *Marking.* Markings on each cylinder must be by stamping plainly and permanently on shoulder, top head, neck or valve protection collar which is permanently attached to the cylinders and forming an integral part thereof, provided that cylinders not less than 0.090 inch thick may be stamped on the side wall adjacent to top head.

§ 178.56 Specification 4AA480 welded steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4AA480 cylinder is a welded steel cylinder having a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of 480 pounds per square inch. Closures welded by spinning process not permitted.

(b) *Steel.* The limiting chemical composition of steel authorized by this specification must be as shown in Table I of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads and bottoms may not be less than 90 percent of the required thickness of the side wall. Seams must be made as follows:

(1) Circumferential seams must be welded. Brazing is not authorized.

(2) Longitudinal seams are not permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding.* Only the welding of neckrings, footrings, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments are made of weldable steel, the carbon content of which does not exceed 0.25 percent.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) For cylinders with an outside diameter over 5 inches, the minimum wall thickness is 0.078 inch. In any case, the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure (in paragraph (i) of this section) may not exceed the lesser value of either of the following:

(i) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section; or

(ii) 35,000 pounds per square inch.

(2) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) The ratio of tangential length to outside diameter may not exceed 4.0 for cylinders with a wall thickness less than 0.100 inch.

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat

treated prior to tests. Any suitable heat treatment in excess of 1100° F is authorized except that liquid quenching is not permitted. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding does not produce a temperature in excess of 400 °F., in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in the cylinder, except those for safety devices, must be provided with a fitting boss, or pad, securely attached to the cylinder by welding or by threads. If threads are used they must comply with the following:

(i) Threads must be clean-cut, even without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 6 engaged threads, must have a tight fit and a calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(3) Closure of a fitting, boss or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds or sufficiently longer to assure complete expansion. Any internal pressure applied after heat-treatment and before the official test may not exceed 90 percent of the test pressure. If, due to failure of test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as described in paragraphs (i)(1), (i)(2), and (i)(3) of this section, to at least two times service pressure. If a selected cylinder fails, then two additional specimens must be selected at random from the same lot and subjected to the prescribed test. If either of these fails the test, then each cylinder in that lot must be so tested; and

(ii) Each cylinder not tested as prescribed in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and must show no defect. A cylinder showing a defect must be rejected unless it may be requalified under paragraph (m) of this section.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder having passed the hydrostatic test, or part thereof heat-treated as required, taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when the cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load''), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for 2-inch gauge lengths or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or a welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimens must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or a welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with

and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On neck, valve boss, valve protection sleeve, or similar part permanently attached to top end of cylinder.

(3) On a plate attached to the top of the cylinder or permanent part thereof: sufficient space must be left on the plate to provide for stamping at least six retest dates: the plate must be at least 1/16 inch thick and must be attached by welding or by brazing at a temperature of at least 1100° F, throughout all edges of the plate.

(4) Variations in location of markings authorized only when necessitated by lack of space.

§ 178.57 Specification 4L welded insulated cylinders.

(a) *Type, size, service pressure, and design service temperature.* A DOT 4L cylinder is a fusion welded insulated cylinder with a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of at least 40 but not greater than 500 pounds per square inch conforming to the following requirements:

(1) For liquefied hydrogen service, the cylinders must be designed to stand on end, with the axis of the cylindrical portion vertical.

(2) The design service temperature is the coldest temperature for which a cylinder is suitable. The required design service temperatures for each cryogenic liquid is as follows:

Cryogenic liquid	Design service temperature
Argon	Minus 320 °F or colder.
Helium	Minus 452 °F or colder.
Hydrogen	Minus 42 3°F or colder.
Neon	Minus 411 °F or colder.
Nitrogen	Minus 320 °F or colder.
Oxygen	Minus 320 °F or colder.

(b) *Material.* Material use in the construction of this specification must conform to the following:

(1) *Inner containment vessel (cylinder).* Designations and limiting chemical compositions of steel authorized by this specification must be as shown in Table 1 in paragraph (o) of this section.

(2) *Outer jacket.* Steel or aluminum may be used subject to the requirements of paragraph (o)(2) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and to the following requirements:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The shell portion must be a reasonably true cylinder.

(2) The heads must be seamless, concave side to the pressure, hemispherical or ellipsoidal in shape with the major diameter not more than twice the minor diameter. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. The heads must be reasonably true to shape, have no abrupt shape changes, and the skirts must be reasonably true to round.

(3) The surface of the cylinder must be insulated. The insulating material must be fire resistant. The insulation on non-evacuated jackets must be covered with a steel jacket not less than 0.060-inch thick or an aluminum jacket not less than 0.070 inch thick, so constructed that moisture cannot come in contact with the insulating material. If a vacuum is maintained in the insulation space, the evacuated jacket must be designed for a minimum collapsing pressure of 30 psi differential whether made of steel or aluminum. The construction must be such that the total heat transfer, from the atmosphere at ambient temperature to the contents of the cylinder, will not exceed 0.0005 Btu per hour, per Fahrenheit degree differential in temperature, per pound of water capacity of the cylinder. For hydrogen, cryogenic liquid service, the total heat transfer, with a temperature differential of 520 Fahrenheit degrees, may not exceed that required to vent 30 SCF of hydrogen gas per hour.

(4) For a cylinder having a design service temperature colder than minus 320 °F, a calculation of the maximum weight of contents must be made and that weight must be marked on the cylinder as prescribed in § 178.35.

(5) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. In addition, an impact test of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(e) *Welding.* Welding of the cylinder must be as follows:

(1) All seams of the cylinder must be fusion welded. A means must be provided for accomplishing complete penetration of the joint. Only butt or joggle butt joints for the cylinder seams are authorized. All joints in the cylinder must have reasonably true alignment.

(2) All attachments to the sidewalls and heads of the cylinder must be by fusion welding and must be of a weldable material complying with the impact requirements of paragraph (l) of this section.

(3) For welding the cylinder, each procedure and operator must be qualified in accordance with the sections of CGA Pamphlet C–3 that apply. In addition, impact tests of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(4) Brazing, soldering and threading are permitted only for joints not made directly to the cylinder body. Threads must comply with the requirements of paragraph (h) of this section.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must be such that the calculated wall stress at the minimum required test pressure may not exceed the least value of the following:

(1) 45,000 pounds per square inch.

(2) One-half of the minimum tensile strength across the welded seam determined in paragraph (l) of this section.

(3) One-half of the minimum tensile strength of the base metal determined as required in paragraph (j) of this section.

(4) The yield strength of the base metal determined as required in paragraph (l) of this section.

(5) Further provided that wall stress for cylinders having longitudinal seams may not exceed 85 percent of the above value, whichever applies.

(6) Calculation must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for pressure test in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Heat treatment is not permitted.

(h) *Openings in cylinder.* Openings in cylinders must conform to the following:

(1) Openings are permitted in heads only. They must be circular and may not exceed 3 inches in diameter or one third of the cylinder diameter, whichever is less. Each opening in the cylinder must be provided with a fitting, boss or pad, either integral with, or securely attached to, the cylinder body by fusion welding. Attachments to a fitting, boss or pad may be made by welding, brazing, mechanical attachment, or threading.

(2) Threads must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of a length not less than that specified for NPT.

(iii) Straight threads must have at least 4 engaged threads, tight fit and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, which prevent leakage and are inert to the hazardous material, are required.

(i) *Pressure test.* Each cylinder, before insulating and jacketing, must be examined under a pressure of at least 2 times the service pressure maintained for at least 30 seconds without evidence of leakage, visible distortion or other defect. The pressure gauge must permit reading to an accuracy of 1 percent.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, and elongation as follows:

(1) The test is required on 2 specimens selected from material of each heat and in the same condition as that in the completed cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness (authorized when cylinder wall is not over 1/16 inch thick).

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load''), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic expansion of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on the elastic modulus of the material used. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* Physical properties must meet the limits specified in paragraph (o)(1), Table 1, of this section, for the particular steel in the annealed condition. The specimens must show at least a 20 percent elongation for a 2-inch gage length. Except that the percentage may be reduced numerically by 2 for each 7,500 pounds per square inch increment of tensile strength above 100,000 pounds per square inch to a maximum of 5 such increments. Yield strength and tensile strength must meet the requirements of paragraph (o)(1), Table 1, of this section.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fails to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A ''root'' bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section and from any other seam or equivalent welded test plate if the seam is welded by a procedure different from that used for the major seam. Specimens must be taken across the particular seam being tested and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as specified in CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 100,000 pounds per square inch, as provided in paragraph (c) of this section.

(4) *Impact tests.* One set of three impact test specimens (for each test) must be prepared and tested for determining the impact properties of the deposited weld metal—

(i) As part of the qualification of the welding procedure.

(ii) As part of the qualification of the operators.

(iii) For each ''heat'' of welding rodor wire used.

(iv) For each 1,000 feet of weld made with the same heat of welding rod or wire.

(v) All impact test specimens must be of the Charpy type, keyhole or milled U-notch, and must conform in all respects to Figure 3 of ASTM E–23–60. Each set of impact specimens must be taken across the weld and have the notch located in the weld metal. When the

cylinder material thickness is 2.5 mm or thicker, impact specimens must be cut from a cylinder or welded test plate used for the tensile or bend test specimens. The dimension along the axis of the notch must be reduced to the largest possible of 10 mm, 7.5 mm, 5 mm or 2.5 mm, depending upon cylinder thickness. When the material in the cylinder or welded test plate is not of sufficient thickness to prepare 2.5 mm impact test specimens, 2.5 mm specimens must be prepared from a welded test plate made from ⅛ inch thick material meeting the requirements specified in paragraph (o)(1), Table 1, of this section and having a carbon analysis of .05 minimum, but not necessarily from one of the heats used in the lot of cylinders. The test piece must be welded by the same welding procedure as used on the particular cylinder seam being qualified and must be subjected to the same heat treatment.

(vi) Impact test specimens must be cooled to the design service temperature. The apparatus for testing the specimens must conform to the requirements of ASTM Standard E–23–60. The test piece, as well as the handling tongs, must be cooled for a length of time sufficient to reach the service temperature. The temperature of the cooling device must be maintained within a range of plus or minus 3° F. The specimen must be quickly transferred from the cooling device to the anvil of the testing machine and broken within a time lapse of not more than six seconds.

(vii) The impact properties of each set of impact specimens may not be less than the values in the following table:

Size of specimen	Minimum impact value required for avg. of each set of three specimens (ft.-lb.)	Minimum impact value permitted on one only of a set of three (ft.-lb.)
10 mm×10 mm	15	10
10 mm×7.5 mm	12.5	8.5
10 mm×5 mm	10	7.0
10 mm×2.5 mm	5	3.5

(viii) When the average value of the three specimens equals or exceeds the minimum value permitted for a single specimen and the value for more than one specimen is below the required average value, or when the value for one specimen is below the minimum value permitted for a single specimen, a retest of three additional specimens must be made. The value of each of these retest specimens must equal or exceed the required average value. When an erratic result is caused by a defective specimen, or there is uncertainty in test procedure, a retest is authorized.

(m) *Radiographic examination.* Cylinders must be subject to a radiographic examination as follows:

(1) The techniques and acceptability of radiographic inspection must conform to the standards set forth in CGA Pamphlet C–3.

(2) One finished longitudinal seam must be selected at random from each lot of 100 or less successively produced and be radiographed throughout its entire length. Should the radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional seams of the same lot must be examined, and if either of these fail to meet the requirements of (m)(1) of this section, only those passing are acceptable.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Welds may be repaired by suitable methods of fusion welding.

(o) *Authorized materials of construction.* Authorized materials of construction are as follows:

(1) *Inner containment vessel (cylinder).* Electric furnace steel of uniform quality must be used. Chemical analysis must conform to ASTM A240, Type 304 Stainless Steel. A heat of steel made under Table 1 and Table 2 in this paragraph (o)(1) is acceptable, even though its check chemical analysis is slightly out of the specified range, if it is satisfactory in all other respects, provided the tolerances shown in Table 3 in this paragraph (o)(1) are not exceeded. The following chemical analyses and physical properties are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis, limits in percent
Carbon [1]	0.08 max.
Manganese	2.00 max.
Phosphorus	0.045 max.
Sulphur	0.030 max.
Silicon	1.00 max.
Nickel	8.00–10.50.
Chromium	18.00–20.00.
Molybdenum	None.
Titanium	None.
Columbium	None.

[1] The carbon analysis must be reported to the nearest hundredth of one percent.

TABLE 2.—PHYSICAL PROPERTIES

	Physical properties (annealed)
Tensile strength, p.s.i. (minimum)	75,000
Yield strength, p.s.i. (minimum)	30,000
Elongation in 2 inches (minimum) percent	30.0
Elongation other permissible gauge lengths (minimum) percent	15.0

TABLE 3.—CHECK ANALYSIS TOLERANCES

Elements	Limit or specified range (percent)	Tolerance over the maximum limit or under the minimum limit
Carbon	To 0.030, incl	0.005
	Over 0.30 to 0.20, incl	0.01
Manganese	To 1.00 incl	.03
	Over 1.00 to 3.00, incl	0.04
Phosphorus [1]	To 0.040, incl	0.005
	Over 0.040 to 0.020 incl	0.010
Sulphur	To .40 incl	0.005

TABLE 3.—CHECK ANALYSIS TOLERANCES—Continued

Elements	Limit or specified range (percent)	Tolerance over the maximum limit or under the minimum limit
Silicon	To 1.00, incl	0.05
Nickel	Over 5.00 to 10.00, incl	0.10
	Over 10.00 to 20.00, incl	0.15
Chromium	Over 15.00 to 20.00, incl	0.20

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(2) *Outer jacket.* (i) Nonflammable cryogenic liquids. Cylinders intended for use in the transportation of nonflammable cryogenic liquid must have an outer jacket made of steel or aluminum.

(ii) Flammable cryogenic liquids. Cylinders intended for use in the transportation of flammable cryogenic liquid must have an outer jacket made of steel.

(p) *Markings.* (1) Markings must be stamped plainly and permanently on shoulder or top head of jacket or on a permanently attached plate or head protective ring.

(2) The letters ''ST'', followed by the design service temperature (for example, ST–423F), must be marked on cylinders having a design service temperature of colder than minus 320° F only. Location to be just below the DOT mark.

(3) The maximum weight of contents, in pounds (for example, ''Max. Content 51 #''), must be marked on cylinders having a design service temperature colder than minus 320° F only. Location to be near symbol.

(4) Special orientation instructions must be marked on the cylinder (for example, THIS END UP), if the cylinder is used in an orientation other than vertical with openings at the top of the cylinder.

(5) If the jacket of the cylinder is constructed of aluminum, the letters ''AL'' must be marked after the service pressure marking. Example: DOT–4L150 AL.

(6) Except for serial number and jacket material designation, each marking prescribed in this paragraph (p) must be duplicated on each cylinder by any suitable means.

(q) *Inspector's report.* In addition to the information required by § 178.35, the inspector's reports must contain information on:

(1) The jacket material and insulation type;

(2) The design service temperature (°F); and

(3) The impact test results, on a lot basis.

§ 178.58 Specification 4DA welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DA is a welded steel sphere (two seamless hemispheres) or a circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. A heat of steel made under Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

4130	Percent
Carbon	0.28/0.33.
Manganese	0.40/0.60.
Phosphorus	0.040 max.
Sulfur	0.040 max.
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01

TABLE 2.—CHECK ANALYSIS TOLERANCES—Continued

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
	Over 0.20 to 0.40, incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method except that plates and billets for hot-drawn containers must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) By best appliances and methods. No defect is acceptable that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(2) All seams of the sphere or cylinders must be fusion welded. Seams must be of the butt or joggle butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Welding.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130 steel.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical and burst tests required and may not be over 70,000 p.s.i. For any diameter container, the minimum wall thickness is 0.040 inch. Calculations must be made by the formulas in (f)(1) or (f)(2) of this section:

(1) Calculation for a sphere must be made by the following formula:

$S=PD/4tE$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed containers must be uniformly and properly heat-treated prior to tests. Heat-treatment of containers of the authorized analysis must be as follows:

(1) All containers must be quenched by oil, or other suitable medium except as provided in paragraph (g)(4) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1,750° F.

(3) The steel must be tempered at the temperature most suitable for the analysis except that in no case shall the tempering temperature be less than 1,000° F.

(4) The steel may be normalized at a temperature of 1,650° F instead of being quenched, and containers so normalized need not be tempered.

(5) All cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quench crack must be rejected and may not be requalified.

(h) *Openings in container.* Openings in the container must comply with the following requirements:

(1) Each opening in the container must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(j) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. The rupture pressure must be included as part of the inspector's report.

(k) *Flattening test.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) *Flattening test for spheres.* One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be at the weld between the parallel steel plates on a

press with a welded seam, at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) *Flattening test for cylinders.* One cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius; test

(l) *Radiographic inspection.* Radiographic examinations is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the sphere diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container must be cause for rejection.

(m) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) A physical test for a sphere is required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates to be taken for each lot of 200 or less spheres.

(2) Specimens for spheres have a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when wall of sphere is not over 3⁄16 inch thick.

(3) A physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less.

(4) Specimens for cylinder must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) Heating of a specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Acceptable results for physical, flattening, and burst tests.* The following are acceptable results of the physical, flattening and burst test:

(1) Elongation must be at least 20 percent for a 2-inch gauge length or 10 percent in other cases.

(2) Flattening is required to 50 percent of the original outside diameter without cracking.

(3) Burst pressure must be at least 3 times service pressure.

(o) *Rejected containers.* Reheat-treatment of rejected cylinders is authorized. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(p) *Marking.* Markings on each container must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.59 Specification 8 steel cylinders with porous fillings for acetylene.

(a) *Type and service pressure.* A DOT 8 cylinder is a seamless cylinder with a service pressure of 250 pounds per square inch. The following steel is authorized:

(1) A longitudinal seam if forge lap welded;

(2) Attachment of heads by welding or by brazing by dipping process; or

(3) A welded circumferential body seam if the cylinder has no longitudinal seam.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of steel.* Materials must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is acceptable that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Exposed bottom welds.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Heat treatment.* Body and heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests.

(g) *Openings.* Openings in the cylinders must comply with the following:

(1) Standard taper pipe threads are required;

(2) Length may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If hydrostatically

tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(i) *Leakage test.* Cylinders with bottoms closed in by spinning must be subjected to a leakage test by setting the interior air or gas pressure to not less than the service pressure. Cylinders which leak must be rejected.

(j) *Physical test.* A physical test must be conducted as follows:

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per-minute during yield strength determination.

(4) Yield strength may not exceed 73 percent of tensile strength. Elongation must be at least 40 percent in 2 inch or 20 percent in other cases.

(k) *Rejected cylinders.* Reheat treatment of rejected cylinder is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(l) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The porous filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length, but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on a sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined. The amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(m) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, without removable cap.

(n) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector is required to—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by, check analyses of samples taken from each heat or from 1 out of each lot of 200 or less, plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements; inspect inside before closing in both ends; verify heat treatment as proper; obtain all samples for all tests and for check analyses; witness all tests; verify threads by gauge; report volumetric capacity and minimum thickness of wall noted.

(3) Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports; and furnish complete reports required by this specification to the person who has completed the manufacture of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(o) *Marking.* (1) Marking on each cylinder must be stamped plainly and permanently on or near the shoulder, top head, neck or valve protection collar which is permanently attached to the cylinder and forming integral part thereof.

(2) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(3) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

§ 178.60 Specification 8AL steel cylinders with porous fillings for acetylene.

(a) *Type and service pressure.* A DOT 8AL cylinder is a seamless steel cylinder with a service pressure of 250 pounds per square inch. However, the attachment of heads by welding or by brazing by dipping process and a welded circumferential body seam is authorized. Longitudinal seams are not authorized.

(b) *Authorized steel.* The authorized steel is as specified in Table I of Appendix A to this part.

(c) *Identification of steel.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Footrings.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) The attachment to the tops or bottoms of cylinders of neckrings, footrings, handlers, bosses, pads, and valve protecting rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(2) Heat treatment is not required after welding or brazing weldable low carbon parts to attachments, specified in paragraph (f)(1) of this section, of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(g) *Wall thickness; wall stress.* The wall thickness/wall stress of the cylinder must conform to the following:

(1) The calculated wall stress at 750 pounds per square inch may not exceed 35,000 pounds per square inch, or one-half of the minimum ultimate strength of the steel as determined in paragraph (l) of this section, whichever value is the smaller. The measured wall thickness may not include galvanizing or other protective coating.

(i) Calculation of wall stress must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=750 pounds per square inch (minimum test pressure);
D=outside diameter in inches;
d=inside diameter in inches.

(ii) Either D or d must be calculated from the relation D = d + 2t, where t = minimum wall thickness.

(2) Cylinders with a wall thickness less than 0.100 inch, the ratio of straight side wall length to outside diameter may not exceed 3.5.

(3) For cylinders having outside diameter over 5 inches, the minimum wall thickness must be 0.087 inch.

(h) *Heat treatment.* Each cylinder must be uniformly and properly heat treated, prior to tests, by any suitable method in excess of 1100° F. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations but may be done before, during, or after the brazing operations. Liquid quenching is not authorized.

(i) *Openings.* Standard taper pipe threads required in all openings. The length of the opening may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If a hydrostatically tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(k) *Leakage test.* Cylinders with bottoms closed in by spinning must be leakage tested by setting the interior air or gas pressure at not less than the service pressure. Any cylinder that leaks must be rejected.

(l) *Physical test.* A physical test must be conducted as follows;

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length 2 inches with a width not over 1 ½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''offset'' method or the ''extension under load'' method as prescribed in ASTM Standard E 8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load'') corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(m) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2 inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2 inch specimens and 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(n) *Weld tests.* Specimens taken across the circumferentially welded seam must be cut from one cylinder taken at random from each lot of 200 or less cylinders after heat treatment and must pass satisfactorily the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (n)(1) of this section. Specimens must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (m) of this section.

(o) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(p) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined; the amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(q) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, but without removable cap.

(r) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by check analyses, of samples taken from each heat or from 1 out of each lot of 200 or less plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements, inspect inside before closing in both ends, verify heat treatment as proper; obtain all samples for all tests and for check analyses, witness all tests; verify threads by gauge, report volumetric capacity and minimum thickness of wall noted.

(3) Report percentage of each specified alloying element in the steel. Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports prescribed in paragraph (b) of this section; and furnish complete test reports required by this specification to the person who has completed the manufacturer of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(s) *Marking.* (1) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(2) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

(3) Markings must be stamped plainly and permanently in locations in accordance with the following:

(i) On shoulders and top heads not less than 0.087 inch thick; or

(ii) On neck, valve boss, valve protection sleeve, or similar part permanently attached to the top end of cylinder; or

(iii) On a plate of ferrous material attached to the top of the cylinder or permanent part thereof; the plate must be at least 1/16 inch thick, and must be attached by welding, or by brazing at a temperature of at least 1,100 °F throughout all edges of the plate. Sufficient space must be left on the plate to provide for stamping at least four (4) retest dates. *§ 178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.*

(a) *Type, size and service pressure.* A DOT 4BW cylinder is a welded type steel cylinder with a longitudinal electric-arc welded seam, a water capacity (nominal) not over 1,000 pounds and a service pressure at least 225 and not over 500 pounds per square inch gauge. Cylinders closed in by spinning process are not authorized.

(b) *Authorized steel.* Steel used in the construction of the cylinder must conform to the following:

(1) The body of the cylinder must be constructed of steel conforming to the limits specified in Table I of Appendix A to this part.

(2) Material for heads must meet the requirements of paragraph (a) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. Content percent may not exceed the following: Carbon 0.25, Manganese 0.60, Phosphorus 0.045, Sulfur 0.050. Heads must be hemispherical or ellipsoidal in shape with a maximum ratio of 2.1. If low carbon steel is used, the thickness of such heads must be determined by using a maximum wall stress of 24,000 p.s.i. in the formula described in paragraph (f)(1) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and the following:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. Heads must be concave to pressure.

(2) Circumferential seams must be by electric-arc welding. Joints must be butt with one member offset (joggle butt) or lap with minimum overlap of at least four times nominal sheet thickness.

(3) Longitudinal seams in shells must conform to the following:

(i) Longitudinal electric-arc welded seams must be of the butt welded type. Welds must be made by a machine process including automatic feed and welding guidance mechanisms. Longitudinal seams must have complete joint penetration, and must be free from undercuts, overlaps or abrupt ridges or valleys. Misalignment of mating butt edges may not exceed 1/6 of nominal sheet thickness or 1/32 inch whichever is less. All joints with nominal sheet thickness up to and including 1/8 inch must be tightly butted. When nominal sheet thickness is greater than 1/8 inch, the joint must be gapped with maximum distance equal to one-half the nominal sheet thickness or 1/32 inch whichever is less. Joint design, preparation and fit-up must be such that requirements of this paragraph (d) are satisfied.

(ii) Maximum joint efficiency must be 1.0 when each seam is radiographed completely. Maximum joint efficiency must be 0.90 when one cylinder from each lot of 50 consecutively welded cylinders is spot radiographed. In addition, one out of the first five cylinders welded following a shut down of welding operations exceeding four hours must be spot radiographed. Spot radiographs, when required, must be made of a finished welded cylinder and must include the girth weld for 2 inches in both directions from the intersection of the longitudinal and girth welds and include at least 6 inches of the longitudinal weld. Maximum joint efficacy of 0.75 must be permissible without radiography.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding of attachments.* The attachment to the tops and bottoms only of cylinders by welding of neckrings, footrings, handles, bosses, pads and valve protection rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* For outside diameters over 6 inches the minimum wall thickness must be 0.078 inch. For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4 to1 (4:1). In any case the minimum wall thickness must be such that the wall stress calculated by the formula listed in paragraph (f)(4) of this section may not exceed the lesser value of any of the following:

(1) The value referenced in paragraph (b) of this section for the particular material under consideration.

(2) One-half of the minimum tensile strength of the material determined as required in paragraph (m) of this section.

(3) 35,000 pounds per square inch.

(4) Stress must be calculated by the following formula:

$$S=[2P(1.3D^2+0.4d^2)]/[E(D^2-d^2)]$$

where:

S=wall stress, p.s.i.;
P=service pressure, p.s.i.;
D=outside diameter, inches;
d=inside diameter, inches;
E=joint efficiency of the longitudinal seam (from paragraph (d) of this section).

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat treated prior to test by the applicable method referenced in paragraph (b) of this section. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in the cylinder must conform to the following:

(1) All openings must be in the heads or bases.

(2) Openings in cylinders must be provided with adequate fittings, bosses, or pads, integral with or securely attached to the cylinder by welding.

(3) Threads must comply with the following:

(i) Threads must be clean cut and to gauge.

(ii) Taper threads must be of length not less than as specified for American Standard Taper Pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(4) Closure of fittings, boss or pads must be adequate to prevent leakage.

(i) *Hydrostatic test.* Cylinders must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit readings to an accuracy of 1 percent. The expansion gauge must permit readings of total volumetric expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least 1 cylinder selected at random out of each lot of 200 or less

must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 500 or less successively produced must be hydrostatically tested to 4 times service pressure without bursting.

(j) *Physical tests.* Cylinders must be subjected to a physical test as follows:

(1) Specimens must be taken from one cylinder after heat treatment and chosen at random from each lot of 200 or less, as follows:

(i) Body specimen. One specimen must be taken longitudinally from the body section at least 90 degrees away from the weld.

(ii) Head specimen. One specimen must be taken from either head on a cylinder when both heads are made of the same material. However, if the two heads are made of differing materials, a specimen must be taken from each head.

(iii) If due to welded attachments on the top head there is insufficient surface from which to take a specimen, it may be taken from a representative head of the same heat treatment as the test cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3⁄16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows when specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the ''off-set'' method or the ''extension under load'' method as prescribed in ASTM Standard E8.

(ii) In using the ''extension under load'' method, the total strain (or ''extension under load''), corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2-percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four increments.

(l) *Tests of welds.* Welds must be subjected to the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less. The specimen must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(2) *Guided bend test.* A root test specimen must be cut from the cylinder used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gauge lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Radiographic examination.* Welds of the cylinders must be subjected to a radiographic examination as follows:

(1) Radiographic inspection must conform to the techniques and acceptability criteria set forth in CGA Pamphlet C–3. When fluoroscopic inspection is used, permanent film records need not be retained.

(2) Should spot radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional welds from the same lot of 50 cylinders or less must be examined, and if either of these fail to meet the requirements, each cylinder must be examined as previously outlined; only those passing are acceptable.

(n) *Rejected cylinders.* (1) Unless otherwise stated, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be rejected.

(2) Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized provided that all defective metal is cut away and the joint is rewelded as prescribed for original welded joints.

(o) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1⁄16-inch thick and must be attached by welding, or by brazing. The brazing rod is to melt at a temperature of 1100°F Welding or brazing must be along all the edges of the plate.

(3) On the neck, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(4) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

(p) *Inspector's report.* In addition to the information required by § 178.35, the inspector's report must indicate the type and amount of radiography.

§ 178.65 Specification 39 non-reusable (non-refillable) cylinders.

(a) *Type, size, service pressure, and test pressure.* A DOT 39 cylinder is a seamless, welded, or brazed cylinder with a service pressure not to exceed 80 percent of the test pressure. Spherical pressure vessels are authorized and covered by references to cylinders in this specification.

(1) *Size limitation.* Maximum water capacity may not exceed: (i) 55 pounds (1,526 cubic inches) for a service pressure of 500 p.s.i.g. or less, and (ii) 10 pounds (277 cubic inches) for a service pressure in excess of 500 p.s.i.g.

(2) *Test pressure.* The minimum test pressure is the maximum pressure of contents at 130° F or 180 p.s.i.g. whichever is greater.

(3) *Pressure of contents.* The term ''pressure of contents'' as used in this specification means the total pressure of all the materials to be shipped in the cylinder.

(b) *Material; steel or aluminum.* The cylinder must be constructed of either steel or aluminum conforming to the following requirements:

(1) *Steel.* (i) The steel analysis must conform to the following:

	Ladle analysis	Check analysis
Carbon, maximum percent	0.12	0.15
Phosphorus, maximum percent	.04	.05
Sulfur, maximum percent	.05	.06

(ii) For a cylinder made of seamless steel tubing with integrally formed ends, hot drawn, and finished, content percent for the following may not exceed: Carbon, 0.55; phosphorous, 0.045; sulfur, 0.050.

(iii) For non-heat treated welded steel cylinders, adequately killed deep drawing quality steel is required.

(iv) Longitudinal or helical welded cylinders are not authorized for service pressures in excess of 500 p.s.i.g.

(2) *Aluminum.* Aluminum is not authorized for service pressures in excess of 500 p.s.i.g. The analysis of the aluminum must conform to the Aluminum Association standard for alloys 1060, 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063 as specified in its publication entitled ''Aluminum Standards and Data''.

(3) Material with seams, cracks, laminations, or other injurious defects not permitted.

(4) Material used must be identified by any suitable method.

(c) *Manufacture.* (1) General manufacturing requirements are as follows:

(i) The surface finish must be uniform and reasonably smooth.

(ii) Inside surfaces must be clean, dry, and free of loose particles.

(iii) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(2) Requirements for seams:

(i) Brazing is not authorized on aluminum cylinders.

(ii) Brazing material must have a melting point of not lower than 1,000 °F.

(iii) Brazed seams must be assembled with proper fit to ensure complete penetration of the brazing material throughout the brazed joint.

(iv) Minimum width of brazed joints must be at least four times the thickness of the shell wall.

(v) Brazed seams must have design strength equal to or greater than 1.5 times the minimum strength of the shell wall.

(vi) Welded seams must be properly aligned and welded by a method that provides clean, uniform joints with adequate penetration.

(vii) Welded joints must have a strength equal to or greater than the minimum strength of the shell material in the finished cylinder.

(3) Attachments to the cylinder are permitted by any means which will not be detrimental to the integrity of the cylinder. Welding or brazing of attachments to the cylinder must be completed prior to all pressure tests.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at test pressure does not exceed the yield strength of the material of the finished cylinder wall. Calculations must be made by the following formulas:

(1) Calculation of the stress for cylinders must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
d=Inside diameter, in inches.

(2) Calculation of the stress for spheres must be made by the following formula:

$$S=PD/4t$$

Where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
t=Minimum wall thickness, in inches.

(e) *Openings and attachments.* Openings and attachments must conform to the following:

(1) Openings and attachments are permitted on heads only.

(2) All openings and their reinforcements must be within an imaginary circle, concentric to the axis of the cylinder. The diameter of the circle may not exceed 80 percent of the outside diameter of the cylinder. The plane of the circle must be parallel to the plane of a circumferential weld and normal to the long axis of the cylinder.

(3) Unless a head has adequate thickness, each opening must be reinforced by a securely attached fitting, boss, pad, collar, or other suitable means.

(4) Material used for welded openings and attachments must be of weldable quality and compatible with the material of the cylinder.

(f) *Pressure tests.* (1) Each cylinder must be tested at an internal pressure of at least the test pressure and must be held at that pressure for at least 30 seconds.

(i) The leakage test must be conducted by submersion under water or by some other method that will be equally sensitive.

(ii) If the cylinder leaks, evidences visible distortion, or any other defect, while under test, it must be rejected (see paragraph (h) of this section).

(2) One cylinder taken from the beginning of each lot, and one from each 1,000 or less successively produced within the lot thereafter, must be hydrostatically tested to destruction. The entire lot must be rejected (see paragraph (h) of this section) if:

(i) A failure occurs at a gage pressure less than 2.0 times the test pressure;

(ii) A failure initiates in a braze or a weld or the heat affected zone thereof;

(iii) A failure is other than in the sidewall of a cylinder longitudinal with its long axis; or

(iv) In a sphere, a failure occurs in any opening, reinforcement, or at a point of attachment.

(3) A ''lot'' is defined as the quantity of cylinders successively produced per production shift (not exceeding 10 hours) having identical size, design, construction, material, heat treatment, finish, and quality.

(g) *Flattening test.* One cylinder must be taken from the beginning of production of each lot (as defined in paragraph (f)(3) of this section) and subjected to a flattening test as follows:

(1) The flattening test must be made on a cylinder that has been tested at test pressure.

(2) A ring taken from a cylinder may be flattened as an alternative to a test on a complete cylinder. The test ring may not include the heat affected zone or any weld. However, for a sphere, the test ring may include the circumferential weld if it is located at a 45 degree angle to the ring, +/−5 degrees.

(3) The flattening must be between 60 degrees included-angle, wedge shaped knife edges, rounded to a 0.5 inch radius.

(4) Cylinders and test rings may not crack when flattened so that their outer surfaces are not more than six times wall thickness apart when made of steel or not more than ten times wall thickness apart when made of aluminum.

(5) If any cylinder or ring cracks when subjected to the specified flattening test, the lot of cylinders represented by the test must be rejected (see paragraph (h) of this section).

(h) *Rejected cylinders.* Rejected cylinders must conform to the following requirements:

(1) If the cause for rejection of a lot is determinable, and if by test or inspection defective cylinders are eliminated from the lot, the remaining cylinders must be qualified as a new lot under paragraphs (f) and (g) of this section.

(2) Repairs to welds are permitted. Following repair, a cylinder must pass the pressure test specified in paragraph (f) of this section.

(3) If a cylinder made from seamless steel tubing fails the flattening test described in paragraph (g) of this section, suitable uniform heat treatment must be used on each cylinder in the lot. All prescribed tests must be performed subsequent to this heat treatment.

(i) *Markings.* (1) The markings required by this section must be durable and waterproof. The requirements of § 173.24(c)(1) (ii) and (iv) of this subchapter and § 178.35(h) do not apply to this section.

(2) Required markings are as follows:

(i) DOT–39.

(ii) NRC.

(iii) The service pressure.

(iv) The test pressure.

(v) The registration number (M****) of the manufacturer.

(vi) The lot number.

(vii) The date of manufacture if the lot number does not establish the date of manufacture.

(viii) With one of the following statements:

(A) For cylinders manufactured prior to October 1, 1996: ''Federal law forbids transportation if refilled-penalty up to $25,000 fine and 5 years imprisonment (49 U.S.C. 1809)'' or ''Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124).''

(B) For cylinders manufactured on or after October 1, 1996: ''Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124).''

(3) The markings required by paragraphs (i)(2)(i) through (i)(2)(v) of this section must be in numbers and letters at least ⅛ inch high and displayed sequentially. For example:

DOT–39 NRC 250/500 M1001.

(4) No person may mark any cylinder with the specification identification ''DOT–39'' unless it was manufactured in compliance with the requirements of this section and its manufacturer has a registration number (M****) from the Associate Administrator.

§ 178.68 Specification 4E welded aluminum cylinders.

(a) *Type, size and service pressure.* A DOT 4E cylinder is a welded aluminum cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 225 to not over 500 pounds per square inch. The cylinder must be constructed of not more than two seamless drawn shells with no more than one circumferential weld. The circumferential weld may not be closer to the point of tangency of the cylindrical portion with the shoulder than 20 times the cylinder wall thickness. Cylinders or shells closed in by spinning process and cylinders with longitudinal seams are not authorized.

(b) *Authorized material.* The cylinder must be constructed of aluminum of uniform quality. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent 5154 [1]
Iron plus silicon	0.45 maximum.
Copper	0.10 maximum.
Manganese	0.10 maximum.
Magnesium	3.10/3.90.
Chromium	0.15/0.35.
Zinc	0.20 maximum.
Titanium	0.20 maximum.
Others, each	0.05 maximum.
Others, total	0.15 maximum.
Aluminum	remainder.

[1] Analysis must regularly be made only for the elements specifically mentioned in this table. If, however, the presence of other elements is indicated in the course of routine analysis, further analysis should be made to determine conformance with the limits specified for other elements.

(c) *Identification.* Material must be identified by any suitable method that will identify the alloy and manufacturer's lot number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. All welding must be by the gas shielded arc process.

(e) *Welding.* The attachment to the tops and bottoms only of cylinders by welding of neckrings or flanges, footrings, handles, bosses and pads and valve protection rings is authorized. However, such attachments and the portion of the cylinder to which it is attached must be made of weldable aluminum alloys.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) The minimum wall thickness of the cylinder must be 0.140 inch. In any case, the minimum wall thickness must be such that calculated wall stress at twice service pressure may not exceed the lesser value of either of the following:

(i) 20,000 pounds per square inch.

(ii) One-half of the minimum tensile strength of the material as required in paragraph (m) of this section.

(2) Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) Minimum thickness of heads and bottoms may not be less than the minimum required thickness of the side wall.

(g) *Opening in cylinder.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by welding by inert gas shielded arc process or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and

calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(3) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit a reading of the total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure of 2 times service pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent over the pressure otherwise specified.

(3) Permanent volumetric expansion may not exceed 12 percent of total volumetric expansion at test pressure.

(4) Cylinders having a calculated wall stress of 18,000 pounds per square inch or less at test pressure may be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested in accordance with paragraphs (h)(1), (h)(2), and (h)(3) of this section.

(ii) All cylinders not tested as provided in paragraph (h)(4)(i) of this section must be examined under pressure of at least 2 times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 1,000 or less must be hydrostatically tested to 4 times the service pressure without bursting. Inability to meet this requirement must result in rejection of the lot.

(i) *Flattening test.* After hydrostatic testing, a flattening test is required on one section of a cylinder, taken at random out of each lot of 200 or less as follows:

(1) If the weld is not at midlength of the cylinder, the test section must be no less in width than 30 times the cylinder wall thickness. The weld must be in the center of the section. Weld reinforcement must be removed by machining or grinding so that the weld is flush with the exterior of the parent metal. There must be no evidence of cracking in the sample when it is flattened between flat plates to no more than 6 times the wall thickness.

(2) If the weld is at midlength of the cylinder, the test may be made as specified in paragraph (i)(1)(i) of this section or must be made between wedge shaped knife edges (60° angle) rounded to a ½ inch radius. There must be no evidence of cracking in the sample when it is flattened to no more than 6 times the wall thickness.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows; when specimens are so taken and prepared, the inspector's report must show in connection with record of physical test detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by the ''offset'' method as prescribed in ASTM Standard E8.

(ii) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* An acceptable result of the physical test requires an elongation to at least 7 percent and yield strength not over 80 percent of tensile strength.

(l) *Weld tests.* Welds of the cylinder are required to successfully pass the following tests:

(1) *Reduced section tensile test.* A specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. The specimen must be taken from across the seam, edges must be parallel for a distance of approximately 2 inches on either side of the weld. The specimen must be fractured in tension. The apparent breaking stress calculated on the minimum wall thickness must be at least equal to 2 times the stress calculated under paragraph (f)(2) of this section, and in addition must have an actual breaking stress of at least 30,000 pounds per square inch. Should this specimen fail to meet the requirements, specimens may be taken from 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. Specimen must be taken across the seam, must be 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen must be bent to refusal in the guided bend test jig illustrated in paragraph 6.10 of CGA Pamphlet C–3. The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fail to meet requirements, the entire lot represented must be rejected.

(m) *Rejected cylinders.* Repair of welded seams is authorized. Acceptable cylinders must pass all prescribed tests.

(n) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include applicable information on iron, titanium, zinc, and magnesium used in the construction of the cylinder.

Issued in Washington, DC on May 8, 1996, under authority delegated in 49 CFR Part 1.

Rose McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12029 Filed 5–22–96; 8:45 am]

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May 23, 1996

Part III

Department of Transportation

Coast Guard

46 CFR Part 15, et al.

Adoption of Industry Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 15, 26, 31, 32, 34, 35, 38, 54, 56, 58, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 189, 190, 193 and 196

[CGD 95–027]

RIN 2115–AF09

Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the ongoing Presidential Regulatory Reform Initiative, the Coast Guard is modifying its regulations for both inspected and uninspected commercial vessels by removing or revising obsolete and unnecessary provisions and incorporating industry standards and practices.

The Coast Guard expects these amendments to reduce the regulatory burden to the maritime industry, reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: This final rule is effective on June 24, 1996. The Director of the Federal Register approves as of June 24, 1996, the incorporation by reference of certain materials listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this rulemaking are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

A copy of the material listed in ''Incorporation by Reference'' of this rulemaking is available for inspection at Room 1300, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR R. K. Butturini, Project Manager; LTJG J.M. Twomey, Project Engineer; Ms. Shereen Bell, Project Assistant—telephone (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 20, 1995, The Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Adoption of Industry Standards'' in the Federal Register (60 FR 65988). The Coast Guard received seven written comments on the proposal. A public meeting was held at Coast Guard Headquarters on February 9, 1996, to discuss the NPRM.

Background and Purpose

This final rule has been sparked by several recent calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and

(4) Expanding efforts to promote consensual rulemaking.

The President's memorandum coincides with U.S. maritime industry requests for greater alignment of Coast Guard regulations with international marine safety standards to reduce cost disadvantages incurred by the U.S. maritime industry and, thereby, improve the competitiveness of the U.S. industry. The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides further justification for identifying excessive requirements in Coast Guard regulations and for streamlining government processes. Also, the Coast Guard recognized the need to explore regulatory reform where it provides an opportunity to reprogram Coast Guard resources to focus more attention on human factors and port state control activities to ensure that other nations are conscientiously implementing international safety agreements.

The Coast Guard held a public meeting on April 20, 1995, announced in the March 30, 1995 Federal Register (60 FR 16423), to discuss the Coast Guard's regulatory development process and the President's Regulatory Review Initiative. During the public meeting, the Coast Guard announced its goals of purging obsolete and outdated regulations and eliminating any Coast Guard induced differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of other responsible foreign nations. In the May 31, 1995 Federal Register (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish all of these goals, the Coast Guard under the general rulemaking authority it holds pursuant to 14 U.S.C. 2, is considering alternative compliance methods, examining ways to make existing regulations more efficient, and comparing U.S. marine safety regulations with American Bureau of Shipping (ABS) Rules and the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS '74). An initial rulemaking removing or amending obsolete and unnecessary provisions was published in the September 18, 1995 Federal Register (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as removal of the requirements for nuclear vessels, ocean incinerator ships, and ocean thermal energy conversion facilities and plantships. This final rule removes or amends obsolete or unnecessary regulations of a more significant nature and incorporates industry consensus standards and practices.

In compiling the list of CFR sections affected by this final rule, the Coast Guard did not consider parts of title 46 of the Code of Federal Regulations (46 CFR) that are under review as part of other, ongoing regulatory projects.

In this final rule, sections of the CFR were identified for removal or revision by comparing the section subject matter to the following list of selection criteria:

(a) Equipment discussed in a section is no longer manufactured or used;

(b) Requirements imposed by a section are repeated in another section;

(c) Requirements imposed by a section make a negligible contribution to shipboard safety;

(d) An appropriate industry consensus standard or practice exists which can be referenced instead of publishing detailed requirements in a regulation; or

(e) The text of a regulation merely repeats statutory language.

Discussion of Comments and Changes

In response to the notice of proposed rulemaking, seven comment letters were received. Additionally, a public meeting was held on February 9, 1996, to discuss the NPRM. Numerous comments were received regarding the proposed amendments at the public hearing.

Part 15—Authority Citation

The Coast Guard notes that the authority citation for part 15 is outdated. Updating the authority citation for part 15 is merely an editorial change and does not affect the proposals of the NPRM. Therefore, the final rule adopts revisions to the authority citation in part 15.

Subparts 32.40, 72.40, 92.20, 167.50, 168.15, and 190.20—Accommodations

One written comment and a participant at the public meeting noted that the language used in the NPRM to revise the accommodations regulations differed among the various subchapters and suggested that the revised text be made consistent among the subchapters for ease in comparing requirements. The proposed changes to the accommodations regulations in the NPRM were written to be consistent with the style and tone of the individual subchapters. For example, subchapter D on tank vessels is older than subchapters H, Passenger Vessels; I, Cargo and Miscellaneous Vessels; and U, Oceanographic Research Vessels, and, therefore, reads differently. The proposed changes were written to read like the remaining text in subchapter D while containing the same information and requirements as the other subchapters. However, the Coast Guard agrees that comparing requirements among subchapters is easier when the text is identical.

Revising the regulatory text for accommodations to be identical among the subchapters is merely an editorial change and is not a substantive change to the NPRM. Therefore, except for text concerning existing vessels particular to each subchapter, the final rule revises the original proposals in the NPRM by making the regulations for accommodations in each subchapter identical.

Two written comments and two participants at the public meeting objected to the proposed changes to the provisions for crew comfort and suggested provisions for crew comfort be retained in the regulations as currently written because the International Labour Office Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ILO 147) only provides for minimum requirements in this area. For example, ILO 147 requires that accommodations be ''adequately heated'', while current Coast Guard regulations specify that accommodation areas be maintained at 68°F or 70°F, depending on the subchapter. The commenters noted that as ''adequately'' is a relative term, vessel owners and operators could meet the technical requirements of ILO 147 and the proposed changes without actually providing adequate accommodations.

The proposed regulations were drafted with the intent of achieving a balance among the need to remove unnecessary or excessive regulations, the necessity of retaining the mandated provisions of ILO 147 and 46 U.S.C. 11101 (the statute which describes minimum requirements for accommodations), and the Coast Guard's desire to promote more autonomy for the marine industry. As a result, some of the provisions for crew comfort in the existing regulations were removed or revised in the NPRM.

The Coast Guard recognizes that some aspects of crew comfort are directly related to safety issues. One such example, pointed out in the comments, regards adequate heating and cooling of crew accommodations. The Coast Guard agrees that heating and cooling accommodations to provide a comfortable living area environment may directly affect crewmembers' ability to obtain sufficient rest. However, the Coast Guard notes that not all of the provisions for crew comfort in current regulations which were proposed for removal or revision directly affect safety. For instance, other examples of provisions for crew accommodations removed or revised in the NPRM and protested by the commenters concern bunk dimensions, separation of accommodations between watches or departments, and acceptable methods of preventing the admission of insects. The Coast Guard does not consider the minor revisions in these areas to be significant to shipboard safety.

Therefore, this final rule is retaining the specification that the heating and cooling system of a vessel be able to maintain the temperature of accommodations at 70°F, but adopts the rest of the proposals relating to accommodations in the NPRM.

Subparts 78.20, 97.17, and 196.17 and §§ 32.05–5 and 167.65–30—Rudder Orders

Two written comments and two participants at the public meeting objected to the proposed deletion of the requirement that ''Right rudder'' and ''Left rudder'' be used for rudder commands on U.S. inspected vessels, arguing that this command convention is necessary for safe navigation because the common practice of using ''Port'' and ''Starboard'' on foreign vessels sometimes causes confusion with pilots. The Coast Guard disagrees with the underlying assumption of the comments that retaining the current command convention of ''Right rudder'' and ''Left rudder'' on U.S. ships will alleviate confusion due to the use of a different command convention on foreign ships.

It is a well-established principle of maritime safety that the helmsman and deck officer or pilot have a shared responsibility to ensure that rudder orders are understood and properly executed, and that problems affecting the execution of steering orders are reported immediately. A helmsman who does not understand a rudder command is duty bound to advise the deck officer or pilot that the command is not clear and cannot be executed. As good communication among bridge personnel is crucial to safe navigation, potential terminology problems between the helmsman and deck officer or pilot must be resolved before maneuvering begins. That is, the person directing the movement of the vessel must inform the helmsman of the commands to be used to order rudder changes. Although the helmsman is generally not expected to question the deck officer's or pilot's choice of convention, the relationship between the helmsman and the deck officer or pilot should allow for agreement on a command convention that minimizes the potential for confusion. When bridge personnel interact effectively, no rudder command convention is necessary.

One commenter also noted that the Coast Guard's commitment to focusing on human factors in maritime safety should dictate that a standard convention for rudder commands is retained in the regulations. The Coast Guard disagrees with this conclusion. Standardizing rudder commands, as in current regulations, ignores the human factors involved in vessel maneuvering by relying on every helmsman, deck officer, and pilot to assume that all mariners will use the same convention. Personal preference, training, experience, and regional customs in the choice of rudder commands are thus not recognized and the important working relationship between the person directing the movement of the vessel and the helmsman is trivialized when a convention is specified in the regulations.

Therefore, the final rule adopts the proposal to remove the specification of ''Right rudder'' and ''Left rudder'' for rudder commands.

§ 35.20–30—Blinding Lights

Two participants at the public meeting suggested retaining the section prohibiting shining lights into other vessels' bridges. The coast Guard notes that the suggestion stems from a misunderstanding of the intent in the proposed rules. In the NPRM, Coast Guard regulations that contain phrases describing the liability of the crew, for not complying with the underlying requirements of the regulations, were grouped into a single category for revision. Section 35.20–30, which prohibits the shining of lights into another vessel's bridge, was included in

this category because it states that a person who flashes blinding lights, or allows blinding lights to be flashed, into another vessel's bridge is liable under suspension and revocation proceedings. The Coast Guard notes that the proposed revision did not remove the actual prohibition against blinding lights, but removed the phrase imposing liability on officers and crew. The Coast Guard considers this reference to liability to be inconsistent with the President's desire to focus on process rather than punishment and with the Coast Guard's commitment to forging greater government/industry partnerships. Additionally, the liability of officers and crew for failure to comply with the provisions of 46 CFR is contained in 46 CFR, part 5 and need not be repeated.

Therefore, the final rule adopts the proposal to remove references to liability regarding the shining of blinding lights into another vessel's bridge.

§§ 35.20–40, 78.21–1, 97.19–1 and 196.19–1—Posting Maneuvering Information

One written comment suggested that the Coast Guard retain the requirement to post maneuvering information contained in 46 CFR instead of removing the requirement and inserting a reference to a similar section in title 33 of the Code of Federal Regulations (33 CFR), as proposed. The comment noted that the proposed revisions would make the affected sections, which also discuss validation of maneuvering information, harder to use. The Coast Guard agrees with the comment. The sections addressing posted maneuvering information in 46 CFR were originally identified for revision because 33 CFR contains similar requirements. However, the Coast Guard agrees that the proposed revisions would be counterproductive.

Therefore, the final rule does not adopt the proposal to remove the requirement for posted maneuvering information.

§§ 61.05–5 and 61.30–5—Preparing Machinery for Inspections

One written comment and two participants at the public meeting objected to the removal of the regulation requiring the chief engineer to prepare machinery for inspection, arguing that the chief engineer is ultimately responsible for the machinery and, therefore, only the chief engineer should prepare machinery for inspection. The Coast Guard disagrees with these comments. The proposed revision does not undermine the important role of the chief engineer in vessel operations and Coast Guard inspections, nor does the proposal affect the chief engineer's responsibilities for vessel machinery. The proposed revision merely recognizes that specifying the chief engineer prepare machinery for inspection is not necessary.

With increased reliance on reduced manning, many companies use shore-maintenance personnel for tasks traditionally performed by the vessel's crew. Specifying that the chief engineer prepare machinery for inspection may undermine the owner's prerogatives in a way that is not intended by the regulations. Additionally, under the current regulations, the chief engineer's responsibility is not to personally prepare machinery for inspection but to ensure that the task is performed competently. The intent of the regulations would be met if another, qualified member of the crew was assigned to prepare machinery for inspection under the chief engineer's direction. Also, the failure to prepare machinery for inspection has little actual consequence except to delay the inspection.

Therefore, the final rule adopts the proposal to remove the requirement for the chief engineer to prepare machinery for inspection.

§ 56.30—Gasketed Mechanical Couplings

One written comment and one participant at the public meeting suggested that, in addition to incorporating the American Society for Testing and Materials (ASTM) standard F 1476–93 (Performance of Gasketed Mechanical Couplings for Use in Piping Applications) the Coast Guard also incorporate ASTM F 1548–94 (Performance of Fittings for Use with Gasketed Mechanical Couplings Used in Piping Applications). This suggestion was made because ASTM F 1548–94 was developed specifically to supplement ASTM F 1476–93 and only applies to gasketed mechanical couplings manufactured in accordance with ASTM F 1476–93. The Coast Guard agrees with the recommendation especially in light of the fact that, though ASTM F 1548–94 is a companion standard to ASTM F 1476–93, it is not referenced in ASTM F 1476–93 because it was developed a year later. Incorporating ASTM F 1548–94 is a logical consequence of incorporating ASTM F 1476–93.

Therefore, the final rule adopts incorporation of ASTM F 1548–94 in addition to incorporating ASTM F 1476–93.

Another comment suggested the Coast Guard also incorporate the American Waterworks Association (AWWA) standard C–606 (Grooved and Shouldered Type Joints) into the same regulations for gasketed mechanical couplings mentioned previously because AWWA C–606 is referenced in ASTM F 1476–93. The Coast Guard disagrees with this recommendation. Industry consensus standards typically reference one another. However, when the regulatory language and an industry standard being incorporated into the regulations provide sufficient guidance to the class affected by the regulations, incorporation of secondary referenced standards is not necessary.

Compliance with the provisions of AWWA C–606 is mandatory under ASTM F 1476–93. Therefore, incorporating AWWA C–606 by reference, in addition to ASTM F 1476–93, is not necessary because ASTM F 1476–93 provides sufficient guidance and the regulatory language ensures enforceability.

Therefore, the final rule does not adopt the incorporation of AWWA C–606 by reference.

§ 56.30–40—Mechanically Attached Fittings

One written comment and one participant at the public meeting suggested that ASTM standard F 1387–93 (Performance of Mechanically Attached Fittings) be incorporated into § 56.30–25, Flared, flareless, and compression joints, instead of into § 56.30–40, Flexible pipe couplings of the compression or slip-on type, as originally proposed, because § 56.30–40 is a confusing section containing requirements that should apply to gasketed mechanical couplings instead of mechanically attached fittings. The Coast Guard agrees with the recommendation. The current regulations for mechanically attached fittings in § 56.30–40 have shown to be confusing because they do not adequately distinguish the differences between gasketed mechanical couplings and mechanically attached fittings. Gasketed mechanical couplings and mechanically attached fittings both employ a compressive force to seal the pipe joint. However, the mechanism to achieve compression is different for each type of fitting. For example, gasketed mechanical couplings typically employ threaded fasteners to compress a resilient gasket around the pipe joint. Conversely, mechanically attached fittings employ a compressive force to become attached to the pipe. The terms ''compression joint'' and ''couplings of the compression type'' refer to the type

of compression used in mechanically attached fittings rather than the compression of a resilient material used in gasketed mechanical couplings.

Moving requirements for mechanically attached fittings to § 56.30–25 instead of § 56.30–40, as originally proposed in the NPRM, is an editorial reorganization of changes and is within the scope of the NPRM. Therefore, the final rule incorporates ASTM F 1387–93 into § 56.30–25 and moves provisions in the existing § 56.30–40, which apply to gasketed mechanical couplings, into § 56.30–35.

§§ 56.60–1, 56.60–10, 56.60–15, 56.60–20, 58.30–5, 58.30–15, and 58.30–17—Ductile Iron

One written comment and a participant at the public meeting noted that, contrary to the current provisions of § 56.60–1, Acceptable materials and specifications, ASTM F 1476–93, proposed for incorporation by reference, allows the use of ductile iron conforming to ASTM standard A 536–83 (Ductile Iron Castings) and suggested A 536–83 ductile iron be added to the list of acceptable materials in § 56.60–1 to remedy this problem. The Coast Guard agrees with the recommendation. As mentioned above, incorporation of a secondary referenced industry standard is not necessary when the regulatory language and the primary standard provide sufficient guidance and the regulations ensure enforceability. In the case of A 536–83 ductile iron, merely incorporating ASTM F 1476–93 would create a conflict with other provisions in the regulations regarding the use of A 536–83 ductile iron. Thus, it is necessary to add A 536–83 ductile iron to the list of acceptable materials to avoid a conflict with other provisions and to ensure the regulations provide sufficient guidance.

Therefore, the final rule adopts a revision to the list of acceptable piping materials in § 56.60–1 regarding the use of A 536–83 ductile iron.

As a result of adding A 536–83 ductile iron to the list of acceptable materials, the Coast Guard is also updating the testing and acceptance criteria for ferrous cast materials used in hydraulic system components addressed in §§ 58.30–5, 58.30–15, and 58.30–17. The current regulations require ferrous cast materials to either exhibit 15 percent elongation in 50 millimeters (2 inches) under a tensile test or pass an impact shock test in order to be considered as ductile iron (as opposed to cast iron) acceptable for use in hydraulic system components. By comparison, ABS considers ferrous cast material exhibiting 12 percent elongation in 50 millimeters (2 inches) as ductile iron without the option for an impact shock test. The Coast Guard considers the elongation requirement to be an important distinction between ductile iron and cast iron and prefers to harmonize the acceptance criteria for ductile iron with ABS. The final rule revises § 56.60–15, Ductile Iron, to reference the requirements of § 56.60–10, Cast Iron, for those materials that do not exhibit at least 12 percent elongation in 50 millimeters (2 inches) under a tensile test. Additionally, as § 58.30–15, Pipe, tubing, valves, fittings, pumps, and motors, references the materials requirements of §§ 56.60–1 and 56.60–2, and therefore the elongation and impact shock testing requirements in § 56.60–15, the elongation and impact shock testing requirements in § 58.30–15 are no longer needed. Removing the previously mentioned testing requirements from § 58.30–15 also necessitates removing references to § 58.30–15 included in §§ 56.60–10, 56.60–20, and 58.30–5 and the impact shock test procedures included in § 58.30–17.

Section 58.30–15 also contains testing requirements for cast aluminum alloys used in hydraulic components. Under current regulations a cast aluminum alloy intended for use in hydraulic components must exhibit 10 percent elongation in 50 millimeters (2 inches) under a tensile test or pass the same impact shock test previously mentioned for ferrous cast materials. Numerous valve and pipe fitting designs employing cast aluminum alloys exhibiting elongation characteristics much lower than 10 percent in 50 millimeters (2 inches) have been accepted on the basis of the impact shock test results and have demonstrated satisfactory service. Additionally, ABS has no similar testing requirements for cast aluminum alloys and has also found that valve and pipe fittings manufactured with cast aluminum alloys having elongation characteristics lower than 10 percent in 50 millimeters (2 inches) have demonstrated satisfactory service.

Revising the testing and acceptance criteria for ferrous cast materials and cast aluminum alloys would harmonize the regulations with industry practices, simplify the regulations, complete the steps necessary to incorporate ASTM F 1476–93 by reference and, therefore, is within the scope of the NPRM.

Therefore, the final rule adopts a revision to the NPRM by updating the testing and acceptance criteria for ferrous cast materials and cast aluminum alloys used in hydraulic system components.

Subpart 162.027 and §§ 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10 and 193.10–90––Firehose Nozzles

One written comment noted that testing firehose nozzles in accordance with ASTM F 1546–94 (Firehose Nozzles) proposed for incorporation by reference, is cost prohibitive and suggested that testing costs may become more reasonable if the Coast Guard recognized previous tests performed on identical materials or components. This comment stems from a misunderstanding of the role of independent laboratories when testing equipment required to be approved by the Coast Guard. Under the proposed revisions to subpart 162.027, nozzles would be considered approved by the Coast Guard if the nozzles successfully pass the tests specified in ASTM F 1546–94 when tested by an independent laboratory accepted by the Coast Guard. The Coast Guard does not prohibit accepted independent laboratories from applying the results of previous testing to subsequent, required testing of identical materials or components. The determination to do so is up to the individual independent laboratory, unless otherwise stated in Coast Guard regulations. The Coast Guard uses oversight processes and field inspection reports to determine whether manufacturing and independent laboratory testing consistently result in products that meet the requirements and intent of the regulations.

As the Coast Guard does not dictate to independent laboratories whether previous test may be used to satisfy an incorporated industry consensus standard, the incorporation of ASTM F 1546–94 into Coast Guard regulations will not add any additional Coast Guard induced economic burden on manufacturers. Therefore, while the Coast Guard notes this comment, the comment does not directly affect the overall proposal to incorporate ASTM F 1546–94 into the regulations for firehose nozzles.

Another commenter asserted that the operator-protection test in ASTM F 1546–94 is costly and unnecessary given the other tests and provisions in ASTM F 1546–94. The Coast Guard disagrees with this comment. The Coast Guard interviewed firefighters, fire fighting trainers, and fire department maintenance personnel to gain an understanding of the operational and maintenance factors that should be considered in an ASTM standard for fire hose nozzles. The Coast Guard then worked with nozzle manufacturers in the development of ASTM F 1546–94,

keeping in mind the information obtained from professional firefighters. The operator-protection test is the only test in ASTM F 1546–94 that measures a nozzle's effectiveness in protecting the nozzle operator from a sudden heat rise. The test is essential to determining whether the nozzle, when operated properly, can provide a firefighter with sufficient time to escape an unexpected fire hazard.

Additionally, ASTM F 1546–94 has undergone a rigorous review and balloting process through ASTM and the provisions of ASTM F 1546–94 have been accepted by both the Coast Guard and industry. Given this Coast Guard/industry consensus on the provisions of ASTM F 1546–94, constructively changing the standard via regulatory requirements would be inconsistent with the Coast Guard's committment to fostering Coast Guard/industry partnerships and the goals of incorporating industry consensus standards by reference. Proposed revisions to ASTM F 1546–94 are outside the scope of this rulemaking and must be considered through the normal industry consensus standard process.

Therefore, while the Coast Guard notes the comment, the Coast Guard does not agree that the provisions of ASTM F 1546–94 should be modified through the final rule.

Another participant at the public meeting disagreed with the Coast Guard's proposal to incorporate the provisions of ASTM F 1546–94 pertaining to firehose nozzles that are suitable for use only in fresh water. The commenter argued that the regulations should prohibit firehose nozzles intended only for fresh water service in accordance with ASTM F 1546–94, because the nozzles might be placed on vessels operating in salt water service and, as a result, the nozzles may not function properly when needed. The Coast Guard disagrees with this comment. As previously mentioned, the Coast Guard helped firehose nozzle manufacturers develop ASTM F 1546–94 with the specific intention of incorporating this standard into the regulations to replace the detailed specifications in subpart 162.027 and to make an improved fire fighting product available to the marine industry. Nozzles manufactured of aluminum alloys are currently the only type specifically mentioned in ASTM F 1546–94 (sections 6.1.2, 9.8.1 and 12) as unsuitable for salt water service. Most shoreside fire fighting organizations, including those in coastal, salt air locations, use firehose nozzles constructed of anodized aluminum with fresh water drawn from municipal water supplies. The anodized aluminum nozzle is rugged, reliable and lighter than similar brass nozzles, which are currently the only type of nozzle approved by the Coast Guard. Whereas brass nozzles are suitable for any service, the aluminum nozzle is not suitable for service in a salt water environment because, if the anodized coating is damaged, the aluminum nozzle body is susceptible to salt water corrosion, which may render the nozzle inoperable.

To protect against aluminum nozzles being placed on vessels in salt water service, the Coast Guard ensured that ASTM F 1546–94 contained provisions for marking firehose nozzles manufactured of aluminum alloys with ''F.W. Only'' to indicate suitability only for fresh water service.

It is true, as argued by the commenter, that without mindfulness in the marine industry, it is possible that nozzles intended only for fresh water service may be placed on vessels operating in salt water. However, only allowing nozzles suitable for both fresh and salt water service on vessels would needlessly penalize the owners and operators of vessels operating exclusively in fresh water by prohibiting the lighter and more common anodized aluminum nozzles. Additionally, firehose nozzles are examined at each Coast Guard inspection and owners and operators would be required to replace unsuitable nozzles.

Therefore, the final rule incorporates all of the provisions in ASTM F 1546–94 regarding firehose nozzles intended for fresh or salt water service.

After further review of the proposed revisions to subpart 162.027, the Coast Guard is making editorial changes to the regulatory language. Specifically, the provisions related to testing conducted by a recognized laboratory in the proposed § 162.027–3, Approval procedures, have been moved to § 162.027–2, Design, construction, testing, and marking requirements.

These revisions represent an editorial reorganization of the proposals in the NPRM and do not affect the scope or intent of the NPRM. Therefore, the final rule revises the proposals in the NPRM by including the previously mentioned editorial changes.

§§ 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3, and 196.35–10—Logbooks

Several written comments were received about logbooks on merchant vessels. One comment noted that the proposed rules suggest that the Coast Guard will no longer gratuitously provide the official logbooks required by the regulations. The comment also noted that the current version of the official logbook (CG–706) contains outdated references to sections of the U.S. Code. The Coast Guard agrees that the regulations should explicitly continue to explain that official logbooks may be obtained gratuitously from any Officer in Charge, Marine Inspection. Also, the Coast Guard agrees that updating the official logbook form to reference current statutes is necessary. The Coast Guard is currently revising the logbook form to include updated references.

Therefore, the final rule revises the proposals of the NPRM by retaining text to explain that official logbooks may be obtained gratuitously from any Officer in Charge, Marine Inspection.

Another written comment suggested that the Coast Guard should issue additional regulations regarding logbook requirements for uninspected towing vessels arguing that requiring logbook entries is the best way of enforcing applicable requirements for uninspected towing vessels. The Coast Guard disagrees with this suggestion. Title 46 of the United States Code, section 11301 (46 U.S.C. 11301) requires all U.S. vessels on a foreign voyage, or, of at least 100 gross tons and on a voyage from a port in the Atlantic Ocean to a port in the Pacific Ocean to maintain an official logbook and describes the information to be recorded in the official logbook. The Coast Guard does not currently require uninspected towing vessels not otherwise subject to 46 U.S.C. 11301 to maintain official logbooks.

While the Coast Guard is concerned about violations of safety regulations on uninspected towing vessels, it is beyond the scope of this rulemaking to address these issues. Therefore, the final rule does not adopt new requirements concerning logbooks on uninspected towing vessels.

§§ 32.05–5, 35.40–40, 78.47–67, 97.35–45, 167.55–5, 169.742 and 196.37–45—Equipment Marking

The Coast Guard proposed in the NPRM to remove the requirement to mark fire axes and firehoses with the vessel's name as these items do not float and would not aid in identifying debris from a sunked vessel. However, this proposal is also included in another rulemaking regarding lifesaving and firefighting equipment. Therefore, the proposal to remove the requirement to mark fire axes and fire hoses with the vessel's name is withdrawn from the final rule.

One written comment suggested removing the requirement to mark life

jackets with the vessel's name on all inland vessels. The commenter reasoned that the need to identify debris after an accident is less critical on inland vessels than on oceangoing vessels because inland commercial vessels are often on dedicated routes. While the Coast Guard considers this suggestion to be consistent with the spirit of the final rule, it would be a substantive change to Coast Guard requirement for which prior public comment is preferred.

Therefore, the final rule adopts the original proposals of the NPRM regarding marking emergency equipment. The suggestion to remove the requirements for marking life jackets with the vessel's name on all inland vessels will be considered for future rulemaking.

§§ 108.611, 108.613, 108.615, 108.659, 109.529, 109.531, 109.533, 109.535, 109.537 and 109.539—Mobile Offshore Drilling Units.

Several written comments were received about proposed changes to the regulations for mobile offshore drilling units (MODU). One comment pointed out that if § 108.613, regarding requirements for power-operated industrial trucks on MODUs, was being removed, then related §§ 108.611 and 108.615 should also be removed. The Coast Guard agrees with this comment. It was the Coast Guard's intention to remove all sections regarding power-operated industrial trucks as the Coast Guard considers regulations for power-operated industrial trucks to be no longer needed. The removal of sections 108.611 and 108.613, as well as, §§ 109.529 through 109.539 was inadvertently omitted from the NPRM.

As the preamble to the NPRM discussed the removal of all regulations for power-operated industrial trucks, removal of additional, inadvertently omitted regulations for power-operated industrial trucks is within the scope of the NPRM. Therefore, the final rule removes §§ 108.613, 108.615, and 109.529 through 109.539 in addition to adopting the original proposals of the NPRM regarding power-operated industrial trucks on MODUs.

Another comment suggested that regulations for breeches buoy instructions, proposed for removal from other subchapters by the NPRM, be removed from the requirements for MODUs as breeches buoys are no longer used for lifesaving purposes on MODUs. The Coast Guard agrees with this suggestion. It was the Coast Guard's intention to removal all requirements for breeches buoy instructions from title 46 CFR. The sections requiring breeches buoy instructions on MODUs were inadvertently omitted from the NPRM.

As removing all requirements for breeches buoy instructions was discussed in the NPRM, removing additional, inadvertently omitted requirements for breeches buoy instructions is within the scope of the NPRM. Therefore, the final rule removes requirements for breeches buoy instructions in § 108.659 in addition to adopting the original proposals of the NPRM regarding breeches buoy instructions.

A separate comment suggested removing the requirement in § 108.637 for marking hand-portable fire extinguishers and their associated stations on MODUs because a similar requirement is not included in other subchapters of 46 CFR. The Coast Guard disagrees with this suggestion because it stems from a misunderstanding of the requirements for marking emergency equipment in the other subchapters of 46 CFR. A requirement for marking hand-portable fire extinguishers and their associated stations is included in the equipment marking provisions for tank vessels, passenger vessels and cargo vessels in §§ 37.40–25, 78.47–30 and 97.37–23, respectively. Also, the ability to match hand-portable fire extinguishers with their stations is an effective method to ensure that extinguishers are available as expected in a vessel's approved fire control plan.

Therefore, the final rule does not adopt the suggestion to remove the requirements for marking hand-portable extinguishers and their associated stations.

Another comment suggested removing the reference to 46 CFR part 147 concerning vessel stores in § 109.558, which addresses hazardous vessel stores, because it is redundant to the applicability section of part 147. The Coast Guard agrees with this comment. One of the goals of the final rule is to remove provisions that are repeated in another section when removal of the provision does not make the regulations confusing or hard to use. Therefore, as the requirement is duplicative with another section in the CFR and the removal of the reference to 46 CFR part 147 in § 109.558 is not a substantive change, the final rule adopts the suggestion to remove the reference to 46 CFR part 147 in § 109.558.

The following discussion summarizes the changes being made by this final rule to 46 CFR.

1. *The requirement addresses equipment that is no longer manufactured or used.* The following sections are being removed or revised because they impose requirements for equipment that is no longer manufactured, is technologically obsolete, or is no longer used in the marine industry.

Seciton 31.10–15(a) of title 46 CFR contains requirements for nuclear vessels. This section was inadvertently omitted from an earlier rulemaking entitled Removal of Obsolete and Unnecessary Regulations (60 FR 48044), which focused on removing regulations for nuclear vessels, ocean incinerator vessels, and ocean thermal energy conversion facilities and plantships. Therefore, this section which pertains to nuclear vessels is being removed.

Section 34.05–5 and subparts 34.13, 76.13, and 95.13 of 46 CFR contain requirements for steam smothering systems used for fire fighting purposes. The Coast Guard has prohibited installation of steam smothering systems on vessels since 1962. Existing steam smothering systems may be retained as long as they are kept in good condition to the satisfaction of the Officer in Charge, Marine Inspection. As no new installations of steam smothering systems are allowed and the designs of existing installations have already been approved, the design requirements for steam smothering systems are no longer necessary and are being removed. The Coast Guard is retaining the regulations pertaining to testing and inspection of installed systems.

Subparts 35.70, 78.80, 97.70, and §§ 78.83–1, 97.70–1, 108.611, 108.613, 108.615, 109.529, 109.531, 109.533, 109.535, 109.537, and 109.539 of title 46 CFR contain requirements for power-operated industrial trucks. Power-operated industrial trucks have been used historically on break-bulk vessels for handling cargo in the holds. Only 66 U.S. flag break-bulk ships are currently inspected by the Coast Guard. Well over half of these vessels are maintained by the Maritime Administration (MARAD), but are not operating. Of MARAD's vessels, only 7 will eventually carry power-operated industrial trucks as ship's equipment. On the remaining, privately owned break-bulk vessels, few trucks are still carried as vessel's equipment because dockside trucks are readily available. Trucks are also used on mobile offshore drilling units (MODUs) to move palletized stores such as bagged cement. Efficient cargo handling systems are increasingly replacing trucks aboard MODUs for this purpose. The demand for faster loading methods and the evolution of container vessels, lighter-abroad vessels (LASH) and roll-on/roll-off (RORO) vessels has also reduced the use of power-operated industrial trucks. Additionally, there have been no reported accidents

involving power-operated industrial trucks in the last 15 years. Therefore, regulations for power-operated industrial trucks are no longer necessary and are being removed.

Sections 32.15–10, 77.27–1, 96.27–1, and 167.40–20 of 46 CFR contain requirements for sounding equipment, including deep-sea hand leads. Reliable, inexpensive electronic sounding equipment and position fixing equipment are available from numerous manufacturers. It is unlikely that a hand lead would be necessary to determine the water depth. Therefore, the requirements for deep sea hand leads are not necessary and are being removed.

Section 32.02–5 and subparts 78.35, 97.33, and 196.33 require cable travelers between fore and aft deck houses separated by more than 46 meters (150 feet) to protect crossing the weather decks. Cable travelers have been replaced by raised fore and aft bridges and side tunnels as safer means of moving between the deckhouses. Additionally, modern vessel designs have abandoned the two deckhouse arrangement in favor of a single deckhouse. Therefore, these sections are being revised to remove the requirement for installation of cable travelers between separated deckhouses and merely require a fixed means of facilitating movement between both ends of the vessel.

Sections 34.05–15, 76.05–30, 95.05–20, 167.45–40, 193.05–20 and subpart 34.55 of 46 CFR require sand, sawdust impregnated with soda or other appropriate dry materials, and a scoop or shaker for distribution, to be located in the machinery spaces for fire fighting purposes. Sand is inferior to other common fire fighting means such as portable extinguishers, which makes this burdensome requirement inappropriate. Therefore, regulations requiring sand in the engineroom are being removed.

Subparts 35.12, 78.53, 97.43, 196.43 and § 167.65–50 of 46 CFR require instructions for the use of breeches buoys. Modern communications and lifesaving equipment have made the use of breeches buoys for lifesaving purposes obsolete. Therefore, the requirement for an instruction placard for the use of breeches buoys is no longer necessary and these sections are being revised.

Sections 35.30–45, 72.05–60, 167.40–35, and 169.321 and subparts 78.75, 97.60, and 196.60 of 46 CFR contain requirements for motion picture film, principally designed to prevent fires. Subpart 78.75 also contains a requirement that motion picture projectors comply with the requirements in the electrical engineering regulations. With the exception of large passenger vessels, which use motion picture projectors in their movie theaters, video cassette recorders and televisions have replaced motion picture projectors on most vessels. Slow-burning film is the only type of film currently available in reel format for use with movie projectors. Section 111.89–1 of 46 CFR requires all motion picture projectors to meet Article 540 of he National Electrical Code. Therefore, as the risks previously associated with motion picture film no longer exist, the regulations for motion picture film are not necessary and are being removed.

Sections 108.403 and 167.45–55 of 46 CFR allow the installation of water spray systems for fire fighting purposes in boiler spaces of MODUs and public nautical school ships. Other fire fighting media, such as carbon dioxide, have proven more effective, reliable and practical than water spray systems. In addition, there are currently no MODUs or public nautical school ship using a water spray system in a boiler space for fire fighting purposes. Therefore, these provisions are not necessary and are being removed.

Subpart 160.018 of 46 CFR contains specifications for rigid liferafts. Rigid liferafts are no longer manufactured for use in the marine industry. Therefore, the specifications for rigid liferafts in 46 CFR 160.018 are no longer necessary and are being removed.

Subpart 160.034 of 46 CFR contains specifications for lifeboat hand-propelling gear. Hand-propelled lifeboats have largely been replaced by reliable, engine-driven lifeboats and are no longer manufactured for use in the marine industry. Therefore, the specifications for hand-propelling gear in 46 CFR 160.034 are no longer necessary and are being removed.

Section 164.016 of 46 CFR contains specifications for microcellular nylon used in the construction of lifesaving equipment. Microcellular nylon has been replaced by more effective materials and is no longer manufactured for use in Coast Guard approved lifesaving equipment. Therefore, the specifications for microcellular nylon are no longer needed and are being removed.

The following table lists the sections that affected by the removal or revision of regulations pertaining to equipment that is no longer used.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Part 15	Revision	Authority citation.
§ 31.10–15	Revision	Nuclear vessels.
§ 32.02–5	Revision	Cable traveler.
§ 32.15–10	Revision	Deep-sea hand leads.
§ 34.05–5	Revision	Steam smothering systems.
§ 34.05–15	Removal	Sand in the engineroom.
Subpart 34.13	Revision	Steam smothering systems.
Subpart 34.55	Removal	Sand in the engineroom.
Subpart 35.12	Revision	Breeches buoy placard.
§ 35.30–45	Removal	Motion picture film.
Subpart 35.70	Removal	Power-operated industrial trucks.
§ 72.05–60	Removal	Motion picture film.
§ 76.05–20	Revision	Fixed fire fighting systems.
§ 76.05–30	Removal	Sand in the engineroom.
Subpart 76.13	Revision	Steam smothering systems.
§ 77.27–1	Revision	Deep-sea hand leads.
Subpart 78.35	Revision	Cable traveler.
Subpart 78.53	Revision	Breeches buoy placard.
Subpart 78.75	Removal	Motion picture film.
Subpart 78.80	Removal	Power-operated industrial trucks.
§ 78.83–1	Revision	Power-operated industrial trucks.
§ 95.05–10	Revision	Fixed fire fighting systems.
§ 95.05–20	Removal	Sand in boiler rooms.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 95.13	Revision	Steam smothering systems.
§ 96.27–1	Revision	Deep-sea hand leads.
Subpart 97.33	Revision	Cable traveler.
Subpart 97.43	Revision	Breeches buoy placard.
Subpart 97.60	Removal	Motion picture film.
Subpart 97.70	Removal	Power-operated industrial trucks.
§ 97.80–1	Revision	Power-operated industrial trucks.
§ 108.403	Revision	Water spray systems.
§ 108.611	Removal	Power-operated industrial trucks.
§ 108.613	Removal	Power-operated industrial trucks.
§ 108.615	Removal	Power-operated industrial trucks.
§ 108.659	Revision	Breeches buoy placard.
§ 109.529	Removal	Power-operated industrial trucks.
§ 109.531	Removal	Power-operated industrial trucks.
§ 109.533	Removal	Power-operated industrial trucks.
§ 109.535	Removal	Power-operated industrial trucks.
§ 109.537	Removal	Power-operated industrial trucks.
§ 109.539	Removal	Power-operated industrial trucks.
Subpart 160.018	Removal	Rigid liferafts.
Subpart 160.034	Removal	Lifeboat hand propelling gear.
Subpart 164.016	Removal	Microcellular nylon.
§ 167.40–20	Revision	Deep-sea hand leads.
§ 167.40–35	Removal	Motion picture film.
§ 167.45–40	Revision	Sand in enginerooms.
§ 167.45–55	Removal	Water spray systems.
§ 167.65–50	Revision	Breeches Buoy placard.
§ 169.321	Removal	Motion picture film.
§ 193.05–20	Removal	Sand in boiler rooms.
Subpart 196.33	Revision	Cable traveler.
Subpart 196.43	Revision	Breeches buoy placard.
Subpart 196.60	Removal	Motion picture film.

2. *The requirement is repeated in another section.* The following provisions are being removed or revised because the requirements are repeated in other, more useful locations in 33 CFR or 46 CFR.

Subparts 32.95, 78.85, 97.75, 196.18, and 196.75 and Section 109.583 of Title 46 CFR contain identical language regarding the requirement that certain vessels operate in accordance with the requirements of the Federal Water Pollution Control Act (FWPCA), as amended, the Oil Pollution Act (OPA), 1961, as amended and parts 151, 155, and 156 of 33 CFR. However, each of the requirements cited contain language regarding their applicability. Therefore, the sections of 46 CFR that merely restate the applicability of the FWPCA, OPA, and 33 CFR are not necessary and are being revised.

Sections 35.20–25 and 167.65–10 and subparts 78.25, 97.23, and 196.23 of 46 CFR prohibit carrying any light not required by law that will interfere with distinguishing signal lights. However, rule 20 of both the Inland and International Rules of the Road published in 33 U.S.C. 2020, contains the same requirement. It is more logical to retain requirements pertaining to signal lights in the Rules of the Road. Therefore, the sections of 46 CFR that prohibit carrying lights that interfere with signal lights are not necessary and are being removed.

Section 56.50–100 of 46 CFR contains a one sentence reference to subpart 58.30 of 46 CFR for fluid power and control system requirements. Subpart 58.30—Fluid Power and Control Systems contains the detailed requirements. Therefore, § 56.50–100 is not necessary and is being removed.

Sections 92.01–13 and 190.01–13 of 46 CFR contain requirements for the design and operation of sliding watertight door assemblies on cargo and miscellaneous vessels and oceanographic research vessels. Section 170.270 of the subdivision and stability regulations in 46 CFR contains identical requirements. The requirements for sliding watertight doors included in part 170 apply to all vessels inspected under 46 CFR, including cargo and miscellaneous vessels and oceanographic research vessels.

Therefore, repeating the requirements for the design and operation of sliding watertight door assemblies in §§ 92.01–13 and 109.01–13 is not necessary and these provisions are being removed.

Section 109.558 of 46 CFR contains a one-sentence reference to part 147 for labeling, stowing and using hazardous vessel's stores. The other subchapters for tank vessels, passenger vessels, and cargo and miscellaneous vessels do not contain a similar reference. Therefore, merely referencing part 147 for the labeling, stowing, and use of hazardous vessel's stores without adding additional information is not necessary and § 109.558 is being removed.

In the following list of sections being removed or revised, the citation to the sections where duplicate requirements are being retained is indicated in square brackets below the section being removed or revised.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 32.95 [33 CFR Subchapter O]	Removal	Oil pollution.
§ 35.20–25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 56.50–100 [§ 58.30]	Removal	Fluid power and control systems.
Subpart 78.25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 78.85 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 92.01–13 [46 CFR Subchapter S, Subpart H] [33 CFR 164.35]	Removal	Watertight doors.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 97.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 97.75 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 109.558 [46 CFR Part 147]	Removal	Hazardous vessel's stores.
§ 109.583 [33 CFR Subchapter O]	Removal	Pollution Prevention.
§ 167.65–10 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 190.01–13 [46 CFR Subchapter S, Subpart H]	Removal	Watertight doors.
Subpart 196.18 [33 CFR Subchapter O]	Removal	Pollution prevention.
Subpart 196.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 196.75 [33 CFR Subchapter O]	Removal	Pollution prevention.

3. *The requirement does not improve shipboard safety.* The following sections are being removed or revised because they make no significant contribution to shipboard safety. This list includes provisions that are typically exceeded by industry voluntarily, regulations that have outlived their usefulness and requirements that result in inefficient administrative procedures.

Section 35.01–5 and subparts 32.40, 72.20, 92.20, 167.50, 168.15, and 190.20 of 46 CFR contain requirements for on-board crew accommodations. In some cases, the requirements contained in these sections are unnecessarily detailed or exceed the requirements of the U.S. Code or the International Labor Office Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) to which the United States is signatory.

As discussed above, the changes in this rulemaking remove or revise those sections of the regulations that are unnecessarily detailed or exceed the requirements of the U.S. Code or ILO 147 in order to make the regulations more concise and consistent with the international standard for on-board crew accommodations. Provisions that affect shipboard safety are not being removed or revised.

Sections 35.10–5 and 35.20–30 of 46 CFR discuss the officer in command's responsibility to conduct drills and the prohibitions against unauthorized lights, flashing blinding lights and unauthorized whistling. Sections 35.25–1 of 46 CFR discusses the chief engineer's responsibility to examine the boilers and report their condition. Additionally, §§ 78.57–1, 97.47–1, and 167.65–15 of 46 CFR require mariners to strictly comply with routing instructions issued by competent naval authorities. Each of these sections include phrases to indicate that the master or other licensed officers of a vessel may be held liable against their licenses in suspension and revocation proceedings for failure to comply with the provisions of the these sections. Phrases of this type are inconsistent with the President's memorandum of March 4, 1995, directing federal agencies to focus on results rather than process and punishment and do not contribute to shipboard safety. The authority to proceed in suspension and revocation proceedings against licensed or certificated mariners that fail to obey a law or regulation is explained in part 5 of this chapter. Reiterating a mariner's liability in other subchapters is not necessary. Therefore, to meet the Coast Guard's goal of focusing on results instead of process and punishment, this final rule removes or revises sections that restate mariners' liability for failure to obey laws or regulations, while retaining the prohibition against the underlying conduct.

Sections 35.20–15, and 167.65–30 and subparts 78.20, 97.17 and 196.17 of 46 CFR specify that the words ''Right rudder'' and ''Left rudder'' be used when it is intended that the wheel, rudder blade and the head of the vessel move to the right or left, respectively. Specifying the direction of the wheel, rudder or vessel intended by the commands ''Right rudder'' and ''Left rudder'' is a detail that is not necessary for professional seamen. It is the shared responsibility of the helmsman and the deck officer or pilot to ensure that terminology and orders are understood. Specifying commands in the regulations does not diminish that responsibility. Therefore, these regulations are not necessary and are being removed.

Sections 61.04–5 and 61.30–5 of 46 CFR assign responsibilities to the chief engineer to prepare the boilers and thermal fluid heaters for inspection. Preparing machinery for inspection reduces the time needed to conduct the required inspections and determine the condition of the machinery. As discussed above, it is a matter of convenience for the vessel and the attending marine inspectors or classification society surveyors to have the machinery prepared in advance, but is not a significant safety issue. It is doubtful that a deck officer or other person not familiar with machinery would be assigned to prepare machinery for inspection because of the great potential for costly delays. Also, other sections in the regulations impart ultimate responsibility for the vessel's machinery to the chief engineer. Therefore, regulations assigning the responsibility to prepare machinery for inspection to the chief engineer are being removed.

Sections 54.01–1, 54.01–3, and 54.01–5 and table 54.01–5 of 46 CFR reference the standards of the Tubular Exchanger Manufacturers Association (TEMA) and the American Society of Mechanical Engineers (ASME) Code for Boilers and Pressure Vessels (ASME Code) for the construction of heat exchangers. Comments received from heat exchanger manufacturers and shipyards indicate that referencing both the TEMA and ASME standards has create confusion. The ASME Code is the primary industry standard for pressure vessels of all types and is extensively referenced in the regulations. The ASME Code is comprehensive and includes updated requirements for design and construction of the heat exchanger components for which a reference to TEMA standards was previously necessary. The ASME Code requirements are equivalent to TEMA requirements. Heat exchangers built solely in accordance with the ASME Code have demonstrated their suitability for shipboard use. Referencing only the ASME Code will result in simplified regulations and less confusion. Therefore, the regulations referencing the TEMA standards are not longer necessary and are being removed.

Part 153 of 46 CFR contains the requirements for issuance of a Certificate of Compliance (COC) and Subchapter O Endorsement (SOE). Under the existing regulations, a COC and SOE are issued by the Coast Guard to a foreign chemical tanker registered with a nation signatory to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Issuance of the COC and SOE is based primarily on a review of he vessel's plans and possession of a valid Certificate of Fitness (COF) issued by the flag state or an authorized third party.

The process to obtain a COC and SOE is initiated when a series of documents

are submitted to the Coast Guard for review. The required submission of these documents to both the Coast guard's Marine safety Center (MSC) and the cognizant Officer in Charge, Marine Inspection (OCMI) often results in unnecessary delays in obtaining a COC and SOE. Also, under current practices, after the COC and SOE have been issued, if a Coast Guard marine inspector discovers that the COF has been reissued by the flag state or its authorized third party, the COC becomes invalid and cargo operations have to be stopped until the MSC reviews the new COF and issues a new SOE.

The new procedure will make the Coast Guard's regulations more consistent with actual practice. Due to the large number of cargoes typically authorized under a COF, currently the MSC does not conduct a detailed review of the majority of a vessel's plans. Instead, the MSC concentrates on identifying cargoes prohibited from bulk carriage in U.S. waters and those cargoes for which the U.S. has special requirements. The MSC accepts a valid COF issued by the flag state or its authorized third part as documentation that he vessel complies with the applicable international codes for carriage of bulk chemicals. These codes are the Bulk Chemical Code (BCH Code) and the International Bulk Chemical Code (IBC Code) developed by the International Maritime Organization. Compliance with these codes is mandatory for any vessel whose flag state is signatory to MARPOL 73/78. Under this rule, only those chemical tankers whose flag state is not signatory to MARPOL 73/78 will require a detailed plan review by the MSC to be issued an SOE. Following the plan review, the MSC will issue an SOE to these vessels with the notation that the flag state is not signatory to MARPOL 73/78.

Therefore this final rule amends the review and issuance process found in 46 CFR part 153 to allow the OCMI to issue the COC and SOE without the MSC's involvement for those vessels whose flag states are signatory to MARPOL 73/78. This final rule also allows the SOE to remain valid as long as the COF is valid even if the COF is revised.

The following table lists the sections that are affected by the removal or revision of redundant information or inefficient administrative procedures.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Tank Vessels:		
Subpart 32.40	Revision	Accomodations.
§ 35.01–5	Revision	Accommodations.
§ 35.10–5	Revision	Emergency drills.
§ 35.20–15	Removal	Steering orders.
§ 35.20–30	Revision	Blinding lights.
§ 35.20–35	Revision	Unnecessary whistling.
§ 35.25–1	Revision	Examination of boilers and machinery by engineer.
Pressure Vessels:		
§ 54.01–1	Revision	Heat exchangers.
§ 54.01–3	Removal	Heat exchangers.
§ 54.01–5	Revision	Heat exchangers.
Inspections and Examinations:		
§ 61.05–5	Revision	Preparing boilers for inspection.
§ 61.30–5	Revision	Preparing thermal fluid heater for inspection.
Passenger Vessels:		
Subpart 72.20	Revision	Accommodations.
Subpart 78.20	Removal	Steering orders.
§ 78.57–1	Revision	Routing instructions.
Cargo and Miscellaneous Vessels:		
Subpart 92.20	Revision	Accommodations.
Subpart 97.17	Removal	Steering orders.
§ 97.47–1	Revision	Routing instructions.
Hazardous Cargoes:		
Part 153	Revision	Certificate of Compliance procedures.
Public School Ships:		
§ 167.65–15	Revision	Routing instructions.
§ 167.65–30	Removal	Steering orders.
Civilian Nautical School Ships:		
Subpart 168.15	Revision	Accommodations.
Oceanographic Research Vessels:		
Subpart 190.20	Revision	Accommodations.
Subpart 196.17	Removal	Steering orders.

4. *An appropriate industry standard or practice exists which can be referenced instead of publishing detailed requirements in the regulations.* The Coast Guard has been systematically replacing detailed specifications in the regulations with industry consensus standards for over 20 years. To date, over 250 regulatory provisions have been replaced with adopted industry standards. Incorporation of industry standards saves time and resources for both the Coast Guard and industry by streamlining the shipboard equipment acceptance process.

Sections 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10, and 193.10–90 of 46 CFR contain requirements for firehose nozzles that are approved under 46 CFR 162.027. In 1994, as discussed above, the Coast Guard helped U.S. nozzle manufacturers develop an ASTM standard for fire fighting nozzles—ASTM F 1546–94, Fire Hose Nozzles. The standard was developed for modern variable-flow or variable-pressure nozzles with the expectation that it would eventually be incorporated into the regulations. Testing conducted by the Coast Guard Research and Development Center in

1988 demonstrated that these nozzles are superior to the currently approved all-purpose nozzles. Two of the tested models were issued Coast Guard approvals in 1990. Variable-flow or variable-pressure nozzles are used by virtually every shoreside fire department in the United States. Incorporation of this standard will make a superior product with a long, successful service history available to the marine industry.

Therefore, this final rule replaces the current specifications for firehose nozzles contained in subpart 162.027 with a reference to ASTM F 1546–94 and allows the use of nozzles that meet the new subpart 162.027 in addition to nozzles previously approved under subpart 162.027.

Section 38.25–10 of 46 CFR contains the inspection requirements for safety relief valves installed on pressure vessel type cargo tanks used in the carriage of liquefied petroleum gas. Under the current regulations, safety relief valves must be tested and adjusted, if necessary, every 4 years. The ABS rules require testing and adjustment every 5 years. The ABS rules with the longer testing interval, have proven to be adequate by the satisfactory performance of safety relief valves on non-U.S. vessels classed by ABS. The Coast Guard has amended the inspection intervals for vessel drydockings and for various pieces of shipboard equipment to agree with the inspection intervals in international standards and ABS rules. These amendments have been made to allow major pieces of equipment to be tested on a cycle that coincides with the normal drydock schedule for the convenience of the vessel owner, class society and the Coast Guard when shipboard safety is not affected. Therefore, this final rule changes the testing interval for safety valves installed on pressure vessel type cargo tanks from 4 years to 5 years to be consistent with international standards and classification society rules.

Sections 56.30–25, 56.30–35, and 56.30–40 of 46 CFR contain regulations for gasketed mechanical couplings and mechanically attached fittings. In 1993, as discussed above, the Coast Guard and ASTM developed ASTM standards F 1387–93 (Performance of Mechanically Attached Fittings) and F 1476–93 (Performance of Gasketed Mechanical Couplings for Use in Piping Applications) with the expectation that they would eventually be incorporated into the regulations. Also, in 1994, ASTM F 1548–94 (the Performance of Fittings for Use with Gasketed Mechanical Couplings Used in Piping Applications) was developed as a companion standard for ASTM F 1476–93. This final rule incorporates ASTM F 1387–93 into § 56.35–30 and both ASTM F 1476–93 and ASTM F 1548–94 into § 56.35–25, and clarifies the requirements for mechanically attached fittings and gasketed mechanical couplings used in piping applications.

As discussed above, § 56.60–1 describes acceptable materials for shipboard piping systems. Specifically, table 56.60–1(a) prohibits the use of ductile iron conforming to ASTM standard A 536–83. However, the specific grades of A 536–83 ductile iron referenced in ASTM F 1476–93 have a successful service history and have proven to be suitable for shipboard use. Therefore, table 56.60–1(a) is revised to allow the use of A 536–83 ductile iron for pipe fittings and valves. Additionally, § 56.60–15, which addresses the use of ductile iron in piping systems, is being revised to allow the use of A 536–83 ductile iron.

Sections 58.30–5, 58.30–15, and 58.30–17 contain requirements for the use of ferrous cast materials in hydraulic systems. Under the current regulations, ferrous cast materials must exhibit at least 15 percent elongation in 50 millimeters (2 inches) when subjected to a tensile test or pass an impact shock test to be considered ductile iron and acceptable for use in hydraulic system components. As previously mentioned, the Coast Guard prefers to retain an elongation requirement for ductile iron while harmonizing with ABS requirements. Therefore, the final rule revise § 56.60–15 to include a requirement that ductile irons exhibit 12 percent elongation in 50 millimeters (2 inches) under a tensile test without the option to pass an impact shock test. As § 58.30–15 references the requirements for ductile iron in § 56.60–2 and § 56.60–15, the elongation and impact shock testing provisions in § 58.30–15 are no longer needed and are removed in the final rule. The final rule also removes the references to § 58.30–15 included in §§ 56.60–10, 56.60–20, and 58.30–5 and the procedures for impact shock testing in § 58.30–17.

Section 58.30–15 also contains elongation and impact shock testing requirements for cast aluminum alloys. As previously mentioned, experience has shown that testing requirements for cast aluminum alloys used in hydraulic components are no longer needed. Additionally, removal of the testing requirements for cast aluminum alloys would harmonize the regulations with ABS rules.

As a result of removing the testing requirements for cast aluminum alloys in § 58.30–15, footnote 16 of table 56.60–2(a), which references the testing requirements of § 58.30–15 and § 58.30–17 is also being removed.

Section 61.20–17 of 46 CFR contains the requirements for tailshaft examination intervals. The current requirements for tailshaft examination intervals are based on the type of lubricant used in the bearing lubrication system. With some exceptions, water-lubricated tailshafts must be drawn and examined at each drydocking. Oil-lubricated bearings need not be drawn and examined if the bearing clearances are taken during drydocking, the inboard seals are examined, the lubricating oil is analyzed, and nondestructive testing is conducted on the connection between the propeller to the tailshaft. The differences in the scope and frequency of inspection are due to the non-corrosive properties of oil. Consequently, the use of an oil-lubricated tailshaft can translate into substantial savings during drydock periods. However, a potential drawback is liability for oil released from leaky seals. As a result, industry demand has spurred development of water-miscible, environmentally safe, non-corrosive lubricants.

The Coast Guard supports the development and use of non-polluting lubricants and has evaluated means for a manufacturer to demonstrate a lubricant's equivalency to oil, based on the lubricant's non-corrosive properties, for purposes of the tailshaft inspection interval. Under this final rule, a water-miscible lubricant tested in accordance with ASTM D 665–92 (Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water) may be considered equivalent to oil for the purposes of the tailshaft inspection interval. Therefore, this final rule incorporates ASTM D 665–92 into the regulations and adds appropriate text into § 61.20–17 explaining the procedures for accepting water-miscible lubricants as equivalent to oil. Additionally, this final rule clarifies the purpose of the tailshaft lubricating oil analysis by explaining that the analysis is to determine the presence of bearing material or other contaminants.

The following table lists the sections that are affected by the removal or the revision of regulations that make a negligible contribution to shipboard safety.

Cite (46 CFR)	CFR change	Subject addressed by regulation
§ 34.10–10	Revision	Firehose nozzles.
§ 34.10–90	Revision	Firehose nozzles.
§ 38.25–10	Revision	Safety relief valves.
§ 56.01–2	Revision	Incorporation by reference.
§ 56.30–25	Revision	Flared, flareless and compression joints.
§ 56.30–35	Revision	Gasketed mechanical couplings.
§ 56.30–40	Removal	Mechanically attached fittings.
§ 56.60–1	Revision	Piping materials.
§ 56.60–2	Revision	Piping materials.
§ 56.60–10	Revision	Cast iron.
§ 56.60–15	Revision	Ductile iron.
§ 56.60–20	Revision	Nonferrous materials.
§ 58.30–5	Revision	Impact shock testing.
§ 58.30–15	Revision	Cast materials.
§ 58.30–17	Removal	Impact shock testing.
Subpart 61.03	New	Incorporation by reference.
§ 61.20–17	Revision	Tailshaft inspections.
§ 76.10–10	Revision	Firehose nozzles.
§ 76.10–90	Revision	Firehose nozzles.
§ 95.10–10	Revision	Firehose nozzles.
§ 95.10–90	Revision	Firehose nozzles.
§ 108.425	Revision	Firehose nozzles.
Subpart 162.027	Revision	Firehose nozzles.
§ 167.45–40	Revision	Firehose nozzles.
§ 193.10–10	Revision	Firehose nozzles.
§ 193.10–90	Revision	Firehose nozzles.

5. *Statutory language repeated*. The regulatory text of the following provisions repeats language or restates requirements from self-executing statutes without any additional regulatory provisions.

Section 26.15–1 of 46 CFR repeats the statutory language of 46 U.S.C. 527e authorizing the Coast Guard to board numbered, uninspected commercial vessels. however, section 527e of 46 U.S.C. was repealed on August 10, 1971 (Pub. L. 92–75, 85 Stat. 228). The authority for the Coast Guard to conduct boardings on uninspected vessels remains in Title 14 U.S.C. 89 and need not be repeated in the regulations. Therefore, § 26.15–1 is revised to remove the cite to the repealed authorizing statute.

Sections 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3, and 196.35–10 of 46 CFR either repeat statutory language or paraphrase statutory requirements for making logbook entries. Subparts 78.03, 97.03, and 196.03 of 46 CFR repeat the possible consequences of a violation of the provisions of 46 CFR and mariners' liability under the suspension and revocation proceedings. Sections 167.65–3 and 196.27–10 of 46 CFR repeat the statutory language regarding negligent operations of a vessel. Regulations that do not add meaning or additional requirements to self-executing statutes are not useful. Therefore, regulations that only repeat language or summarize requirements from self-executing statutes are not necessary and are being removed or revised.

The following table lists the sections that are affected by the removal or revision of regulations that repeat statutory language.

Cite (46 CFR)	CFR change	Subject addressed by regulation
§ 26.15–1	Revision	Boarding by Coast Guard.
§ 35.07–5	Revision	Logbook entries.
§ 35.07–15	Removal	Logbook entries.
Subpart 78.03	Removal	Statutory penalties.
§ 78.37–3	Revision	Logbook entries.
Subpart 97.03	Removal	Statutory penalties.
§ 97.35–3	Revision	Logbook entries.
§ 97.35–10	Removal	Logbook entries.
§ 167.65–3	Removal	Negligent operations.
Subpart 196.03	Removal	Statutory penalties.
§ 196.27–10	Removal	Negligent operations.
§ 196.35–3	Revision	Logbook entries.
§ 196.35–10	Removal	Logbook entries.

Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 56.01–2, 61.03–1, and 162.027–1 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in these sections.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order, nor has it been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11004, February 26, 1979). The Coast

Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Although this final rule is intended to reduce regulatory burden by eliminating redundancy and clarifying compliance requirements, it will not have a significant economic impact on a substantial number of small entities because it amends portions of regulations that—

(1) Are purely administrative;

(2) Do not reflect common marine industry practice;

(3) Do not have general applicability; or

(4) Are repeated in other sections.

Additionally, any equipment previously approved under provisions of the regulations being amended by this rule is still considered as approved and need not obtain new approvals.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no new requirements for collection-of-information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 15, 26, 31, 32, 34, 35, 38, 54, 56, 58, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164. 167, 168, 169, 189, 190, 193, and 196 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8101, 8102, 8104, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

PART 26—OPERATIONS

2. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

3. In § 26.15–1, paragraphs (a) and (b) are removed, paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

§ 26.15–1 May board at any time.

(a) To facilitate the boarding of vessels by the commissioned, warrant, and petty officers of the U.S. Coast Guard in the exercise of their authority, every uninspected vessel, as defined in 46 U.S.C. 2101(43), if underway and upon being hailed by a Coast Guard vessel, must stop immediately and lay to, or must maneuver in such a way to permit the Coast Guard boarding officer to come aboard. Failure to permit a Coast Guard boarding officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided in law.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

4. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.10–15 [Amended]

5. In § 31.10–15, paragraph (a) is amended by removing the words ''and in the case of nuclear vessels, at least once every year''.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

6. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

7. Section 32.02–5 is revised to read as follows:

§ 32.02–5 Communication between deckhouses—TB/OCLB.

On all tank vessels where the distance between deckhouses is more than 46 meters (150 feet), a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

8. Section 32.15–10 is revised to read as follows:

§ 32.15–10 Sounding machines—T/OCL.

All mechanically propelled vessels in ocean or coastwise service of 500 gross tons and over, and all mechanically propelled vessels in of 500 gross tons and over and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic deep-sea sounding apparatus.

9. Subpart 32.40 is revised to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

Sec.

32.40–1 Application—TB/ALL.
32.40–5 Intent—T/ALL.
32.40–10 Location of crew spaces—T/ALL.
32.40–15 Construction—T/ALL.
32.40–20 Sleeping accommodations—T/ALL.
32.40–25 Washrooms and toilet rooms—T/ALL.
32.40–30 Messrooms—T/ALL.
32.40–35 Hospital space—T/ALL.
32.40–40 Other spaces—T/ALL.
32.40–45 Lighting—T/ALL.
32.40–50 Heating and cooling—T/ALL.
32.40–55 Insect screens—T/ALL.
32.40–60 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—T/ALL.
32.40–65 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

Subpart 32.40—Accommodations for Officers and Crew

§ 32.40–1 Application—TB/ALL.

(a) The provisions of this subpart, except § 32.40–60 and § 32.40–65, apply to all tankships of 100 gross tons and over constructed on or after June 15, 1987.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of § 32.40–60.

(c) Tankships of 100 gross tons and over constructed prior to June 15, 1987, must meet the requirements of § 32.40–65.

§ 32.40–5 Intent—T/ALL.

The accommodations provided for officers and crew on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged and insulated from undue noise, heat and odors.

§ 32.40–10 Location of crew spaces—T/ALL.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purposes of this paragraph, the vessel's length must be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 32.40–15 Construction—T/ALL.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable and sanitary condition.

§ 32.40–20 Sleeping accommodations—T/ALL.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which may berth more than 4 persons.

(c) Each room must be of such size that there is at least 2.78 square meters

(30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must not be less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 32.40–25 Washrooms and toilet rooms—T/ALL.

(a) At least 1 toilet, 1 washbasin, and 1 shower or bathtub must be provided for each 8 members or portion thereof in the crew who do not occupy sleeping accommodations to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 32.40–30 Messrooms—T/ALL.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40–35 Hospital space—T/ALL.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat must be provided.

§ 32.40–40 Other spaces—T/ALL.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size available on an open deck to which the crew has access when off duty.

§ 32.40–45 Lighting—T/ALL.

Each berth must have a light.

§ 32.40–50 Heating and cooling—T/ALL.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21 °C (70 °F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 32.40–55 Insect screens—T/ALL.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 32.40–60 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accommodations must be consistent with the principles underlying the requirements for crew accommodations of tankships of 100 gross tons or more.

§ 32.40–65 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

All tankships of 100 gross tons and over constructed before June 15, 1987, may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 32.95 (§ 32.95–1)—[Removed]

10. Subpart 32.95 consisting of § 32.95–1 is removed.

PART 34—FIRE FIGHTING EQUIPMENT

11. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

12. In § 34.05–5, paragraphs (a), (a)(1), (a)(1), (a)(2) (a)(3) and (a)(4) are revised to read as follows:

§ 34.05–5 Fire extinguishing systems—T/ALL.

(a) Approved fire extinguishing systems must be installed on all tankships in the following locations. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(1) *Dry cargo compartments.* A carbon dioxide or water spray system must be installed for the protection of all dry cargo compartments. Where such compartments are readily accessible by means of doors such spaces need be protected only by the fire main system.

(2) *Cargo tanks.* A deck foam system must be installed for the protection of all cargo tank spaces. Where a deck foam system is installed, an approved inert gas, steam or other system may also be installed for the purposes of fire prevention or inerting of cargo tanks. For vessels under 100 feet in length, the semiportable equipment required by footnote 1 of table 34.05–5(a) will be considered as meeting the requirements of this subparagraph.

(3) *Lamp and paint lockers and similar spaces.* A carbon dioxide or water spray system must be installed in

all lamp and paint lockers, oil rooms, and similar spaces.

(4) *Pumprooms.* A carbon dioxide, inert gas, foam or water spray system must be installed for the protection of all pumprooms.

* * * * *

§ 34.05–15 [Removed]

13. Section 34.05–15 is removed.

14. In § 34.10–10, paragraphs (e), (e–1) and (n) are removed, table 34.10–10(E–1) is redesignated as table 34.10–(10)(E), paragraphs (f) through (m) are redesignated as paragraphs (g) through (n), respectively, and new paragraphs (e), (f) and (o) are added to read as follows:

§ 34.10–10 Fire station hydrants, hose, and nozzles—T/ALL.

* * * * *

(e) Each fire station hydrant must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements in subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. A suitable hose rack or other device must be provided. Hose racks on weather decks must be located to afford protection from heavy seas. The hose must be stored in a location that is readily visible.

(f) Each combination firehose nozzle previously approved under subpart 162.027 of this chapter in the locations listed in table 34.10–10(E) must have a low-velocity water spray applicator also previously approved under subpart 162.027 of this chapter that is of the length listed in that table.

* * * * *

(o) Each low-velocity water spray applicator under paragraph (f) of this section must have fixed brackets, hooks, or other means for stowing next to the hydrant.

15. In § 34.10–90, paragraphs (a)(12) and (a)(13) are removed, paragraph (a)(14) is redesignated as (a)(12) and paragraphs (a)(10), (a)(11) and (b)(2) are revised to read as follows:

§ 34.10–90 Installations contracted for prior to May 26, 1965—T/ALL.

(a) * * *

(10) Each fire station hydrant on a tankship of 500 gross tons or more must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of subpart 162.027. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(11) On each tankship of 1000 gross tons or more, the firehose nozzle required by paragraph (a)(10) of this section on each of the following hydrants must have a low-velocity water-spray applicator that was previously approved under subpart 162.027 and that connects to that nozzle when the nozzle itself was previously approved under subpart 162.027—

(i) At least two hydrants in the Machinery and boiler spaces; and

(ii) At least 25 percent of other hydrants.

* * * * *

(b) * * *

(2) Each fire station hydrant must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of subpart 162.027. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the firehose nozzles were previously approved under subpart 162.027, each of the number of hydrants in the locations listed in table 34.10–10(E) must have a low-velocity water spray applicator that—

(i) Was previously approved under subpart 162.027 of this chapter;

(ii) Is the length listed in table 34.10–10(E); and

(iii) Meets § 34.10–10(o).

16. Subpart 34.13 consisting of § 34.13–1 is revised to read as follows:

Subpart 34.13—Steam Smothering Systems

§ 34.13–1 Application—T/ALL.

Steam smothering fire extinguishing systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 34.55 (§§ 34.55–1, 34.55–5 and 34.55–10)—[Removed]

17. Subpart 34.55 consisting of §§ 34.55–1, 34.55–5 and 34.55–10 is removed.

PART 35—OPERATIONS

18. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–5 [Amended]

19. In § 35.01–5, paragraphs, (b) and (c) are removed and the paragraph designation ''(a)'' is removed from paragraph (a).

20. Section 35.07–5 is revised to read as follows:

§ 35.07–5 Logbooks and records—TB/ALL.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. The official logbook is available free to masters of U.S.-flag vessels from the officer in Charge, Marine Inspection, as form CG–706B or CG–706C, depending on the number of persons employed in the crew. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 35.07–15 [Removed]

21. Section 35.07–15 is removed.

§ 35.10–5 [Amended]

22. In § 35.10–5, paragraph (g) is removed and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

23. Subpart 35.12 consisting of §§ 35.12–1 and 35.12–5 is revised to read as follows:

Subpart 35.12—Placaid of Lifesaving Signals

Sec.
35.12–1 Application—T/OCLB.
35.12–5 Availability—T/OCLB.

Subpart 35.12—Placard of Lifesaving Signals

§ 35.12–1 Application—T/OCLB.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in oceans, coastwise, or Great Lake service.

§ 35.12–5 Availability—T/OCLB.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulations 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

§ 35.20–15 [Removed]

24. Section 35.20–15 is removed.

§ 35.20–25 [Removed]

25. Section 35.20–25 is removed.

26. Section 35.20–30 is revised to read as follows:

§ 35.20–30 Flashing the rays of a searchlight or other blinding light—T/ALL.

No person shall flash, or cause to be flashed, the rays of a search light or other blinding light onto the bridge or into the pilothouse of any vessel under way.

27. Section 35.20–35 is revised to read as follows:

§ 35.20–35 Whistling—T/All.

The unnecessary sounding of a vessel's whistle is prohibited within any harbor limits of the United States.

28. Section 35.25–1 is revised to read as follows:

§ 35.25–1 Examiniation of boilers and machinery by engineer—T/ALL.

It shall be the duty of an engineer when assuming charge of the boilers to examine the same forthwith and thoroughly. If any part thereof is found in bad condition, the engineer shall immediately report the facts to the master, owner, or agent, and to the nearest Officer in Charge, Marine Inspection.

§ 35.30–45 [Removed]

29. Section 35.30–45 is removed.

Subpart 35.70 (§ 35.70–1—35.70–35)—[Removed]

30. Subpart 35.70 consisting of §§ 35.70–1 through 35.70–35 is removed.

PART 38—LIQUEFIED FLAMMABLE GASES

31. The authority citation for part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

32. In § 38.25–10, paragraph (b) is revised to read as follows:

§ 38.25–10 Safety relief valves—TB/ALL.

* * * * *

(b) The safety relief valve discs must be lifted from their seats in the presence of a marine inspector by either liquid, gas, or vapor pressure at least once every 5 years to determine the accuracy of adjustment and, if necessary, must be reset.

PART 54—PRESSURE VESSELS

33. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

34. In § 54.01–1, paragraph (b) is amended by removing the incorporation by reference entry for the Tubular Exchanger Manufacturers Association.

§ 54.01–3 [Removed]

35. Section 54.01–3 is removed.

§ 54.01–5 [Amended]

36. In § 54.01–5, paragraph (d)(5) is amended by adding the word ''and'' after the semicolon, paragraph (d)(6) is removed, paragraph (d)(7) is designated as paragraph (d)(6) and footnote 8 is removed from table 54.01–5(b).

PART 56—PIPING SYSTEMS AND APPURTENANCES

37. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

38. In § 56.01–2, paragraph (b) is amended by adding in numerical order of the standards incorporated by reference from the American Society for Testing and Materials (ASTM) the following additional standards:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

ASTM F 1387–93 Standard Specification for Performance of Mechanically Attached Fittings, including supplementary requirements and annex—56.30–25

ASTM F 1476–93 Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications, including annex—56–30–35

ASTM F 1548–94 Standard specification for Performance of Fittings for Use with Gasketed Mechanical Couplings for Use in Piping Applications—56.30–35

* * * * *

39. Section 56.30–25 is revised to read as follows:

§ 56.30–25 Flared, flareless, and compression fittings.

(a) This section applies to pipe fittings that are mechanically connected to pipe by such means as ferrules, flared ends, swaging, elastic strain preload, crimping, bite-type devices, and shape memory alloys. Fittings to which this section applies must be designed, constructed, tested, and marked in accordance with ASTM F 1387–93. Previously approved fittings may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) Flared, flareless and compression fittings may be used within the service limitations of size, pressure, temperature, and vibration recommended by the manufacturer and as specified in this section.

(c) Flared, flareless, and compression type tubing fittings may be used for tube sizes not exceeding 50 millimeters (2 inches) outside diameter within the limitations of applicable standards and specifications listed in this section and § 56.60–1 of this part.

(d) Flareless fittings must be of a design in which the gripping member or sleeve must grip or bite into the outer surface of the tube with sufficient strength to hold the tube against pressure, but without appreciably distorting the inside tube diameter or reducing the wall thickness. The gripping member must also form a pressure seal against the fitting body.

(e) For fluid services, other than hydraulic systems, using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel cooper, or copper zinc alloy. When using copper or copper-zinc alloy, flared fittings are required. (See also § 56.50–70 for gasoline fuel systems, § 56.60–75 for

diesel fuel systems, and § 58.25–20 for hydraulic systems for steering gear.)

40. Section 56.30–35 is revised to read as follows:

§ 56.30–35 Gasketed mechanical couplings.

(a) This section applied to pipe fittings that form a seal by compressing a resilient gasket onto the pipe joint primarily by threaded fasteners and where joint creep is only restricted by such means as machined grooves, centering pins, or welded clips. Fittings to which this section applies must be designed, constructed, tested, and marked in accordance with ASTM F 1476–93 and ASTM F 1548–94. Previously approved fittings may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) Gasketed mechanical couplings may be used within the service limitations of pressure, temperature and vibration recommended by the manufacturer, except that gasketed mechanical couplings must not be used in—

(1) Any location where leakage, undetected flooding or impingement of liquid on vital equipment may disable the vessel; or

(2) In tanks where the liquid conveyed in the piping system is not chemically compatible with the liquid in the tank.

(c) Gasketed mechanical couplings must not be used as expansion joints. Positive restraints must be included, where necessary, to prevent the coupling from creeping on the pipe and uncovering the joint. Bite-type devices do not provide positive protection against creep and are generally not accepted for this purpose. Machined grooves, centering pins, and welded clips are considered positive means of protection against creep.

§ 56.50–100 [Removed]

41. Section 56.50–100 is removed.

§ 56.60–1 [Amended]

42. In § 56.60–1, table 56.60–(a), the table's heading is revised and an entry for ASTM A 536–83 ductile iron and footnote [20] are added to ''Castings [13] iron:'' to read as follows:

Table 56.60–1(a)—ADOPTED SPECIFICATIONS AND STANDARDS (REPLACES TABLE 126.1)

* * * * *

A 536 Ductile iron—See footnote 20—([20]).

* * * * *

[20] Limited to pipe fittings and valves. See § 56.60–15(d) for additional information.

§ 56.60–2 [Amended]

43. In § 56.60–2, table 56.60–2(a), footnote 16 and the references to footnote 16 for B26 and B85 castings are removed.

§ 56.60–10 [Amended]

44. In § 56.60–10, paragraph (d) is removed.

45. In § 56.60–15, paragraph (b) introductory text, is revised and a new paragraph (d) is added to read as follows:

§ 56.60–15 Ductile iron.

* * * * *

(b) Ductile iron castings conforming to ASTM A 395 may be used in hydraulic systems at pressures in excess of 7500 kilopascals (1000 pounds per square inch) gage, provided the following:

* * * * *

(d) Ductile iron castings exhibiting less than 12 percent elongation in 50 millimeters (2 inches) when subjected to a tensile test must meet the requirements for cast iron in this part.

§ 56.60–20 [Amended]

46. In § 56.60–20, paragraph (b) is removed, the designation ''(a)'' is removed from paragraph (a), and paragraphs (a)(1) through (a)(4) are redesignated as paragraphs (a) through (d).

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

47. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

48. In § 58.30–5, paragraph (a) is revised to read as follows:

§ 58.30–5 Design requirements.

(a) The requirements of part 56 are also applicable to piping and fittings in fluid power and control systems listed in § 58.30–1 of this part, except as modified herein. The designer should consider the additional pressure due to hydraulic shock and should also consider the rate of pressure rise caused by hydraulic shock.

* * * * *

§ 58.30–15 [Amended]

49. In § 58.30–15, paragraph (f) is removed and paragraph (g) is redesignated as paragraph (f).

§ 58.30–17 [Removed]

50. Section 58.30–17 is removed.

PART 61—PERIODIC TESTS AND INSPECTIONS

51. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46

52. Subpart 61.03, consisting of § 61.03–1, is added to read as follows:

Subpart 61.03—Incorporation of Standards

§ 61.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the Federal Register and the material must be available to the public. All approved material available for inspection at the Office of the Federal Register, 800 North Capital Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW., Washington, DC 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 as follows:

American Society for Testing and Materials (ASTM) 1916 Race Street, Philadelphia, PA 19103

ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, 1992—61.20–17

§ 61.05–5 [Amended]

53. In § 61.05–5, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

54. Section 61.20–17 is revised to read as follows:

§ 61.20–17 Examination intervals.

(a) A lubricant that demonstrates the corrosion inhibiting properties of oil when tested in accordance with ASTM D 665–92 is considered to be equivalent to oil for the purposes of the tailshaft examination interval.

(b) Except as provided in paragraphs (c) through (f) of this section, each tailshaft on a vessel must be examined twice within any 5 year period. No more than 3 years may elapse between any 2 tailshaft examinations.

(c) Tailshafts on vessels fitted with multiple shafts must be examined once every 5 years.

(d) Tailshafts with inaccessible portions fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every 5 years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentrations or are fitted with a flanged propeller. Accessible portions of tailshafts must be examined visually during each drydock examination.

(e) Tailshafts with oil lubricated bearings, including bearings lubricated with a substance considered to be equivalent to oil under the provisions of paragraph (a) of this section need not be drawn for examination—

(1) If tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) If the inboard seal assemblies are examined whenever the vessel undergoes a drydock examination or underwater survey;

(3) If an analysis of the tailshaft bearing lubricant is performed semiannually in accordance with the lubrication system manufacturer's recommendations to determine bearing material content or the presence of other contaminants; and

(4) If—

(i) For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed 5 years; or

(ii) For tailshafts with a propeller fitted to the shaft by means of a coupling flange, the propeller coupling bolts and flange radius are nondestructively tested whenever they are removed or made accessible in connection with overhaul or repairs.

(f) Tailshafts on mobile offshore drilling units are not subject to examination intervals under paragraphs (b) through (d) of this section if they are—

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G–MCO).

§ 61.30–5 [Amended]

55. In § 61.30–5, paragraph (a) is removed and the paragraph designation ''(b)'' is removed from paragraph (b).

PART 72—CONSTRUCTION AND ARRANGEMENT

56. The authority citation for part 72 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.05–60 [Removed]

57. Section 72.05–60 is removed.

58. Subpart 72.20 is revised to read as follows:

Subpart 72.20—Accomodations for Officers and Crew

Sec.

72.20–1 Application.
72.20–5 Intent.
72.20–10 Location of crew spaces.
72.20–15 Construction.
72.20–20 Sleeping accommodations.
72.20–25 Washrooms and toilet rooms.
72.20–30 Messrooms.
72.20–35 Hospital space.
72.20–40 Other spaces.
72.20–45 Lighting.
72.20–50 Heating and cooling.
72.20–55 Insect screens.
72.20–90 Vessels contracted for prior to November 19, 1952.

Subpart 72.20—Accommodations for Officers and Crew

§ 72.20–1 Application.

The provisions of this part, except § 72.20–90, apply to all vessels contracted for after November 18, 1952. Vessels contracted for before November 19, 1952, must meet the requirements of § 72.20–90.

§ 72.20–5 Intent.

Accomodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

§ 72.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purpose of this paragraph, the vessel's length must be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 72.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable, and sanitary condition.

§ 72.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which shall berth more than 4 persons.

(c) Each room shall be of such size that there is at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room shall be not less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each persons shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 72.20–25 Washrooms and toilet rooms.

(a) There must be at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew who do not occupy sleeping accommodations to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separate by partitions.

§ 72.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 72.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew, or portion thereof, who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat must be provided.

§ 72.20–40 Other spaces.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on an open deck to which the crew has access when off duty.

§ 72.20–45 Lighting.

Each berth must have a light.

§ 72.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21°C (70°F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 72.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 72.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, must meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction provided that in no case will a greater departure from the standards of §§ 72.20–5 through 72.20–55 be permitted than presently exists.

(b) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Where reasonable and practicable, a minimum of 1 toilet, shower, and washbasin must be provided for each 10 members of the crew or fraction thereof.

(3) Crew spaces must have a volume of at least 3.4 cubic meters (120 cubic feet) and a deck area of at least 1.5 square meters (16 square feet) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than 2 high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths must be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and, practicable, must be insulated from undue noise and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, must meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a good condition to the satisfaction of the Office in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) There must be a minimum of 1 toilet, 1 shower, and 1 washbasin for each 8 members of the crew or fraction thereof who are not accommodated in rooms having attached private or semi-private facilities. Washbasins, showers, and bathtubs, if substituted for showers, must be equipped with adequate plumbing, including hot and cold running water.

(3) Crew spaces must have a volume of at least 3.4 cubic meters (120 cubic feet) and a deck of at least 1.5 square meters (16 square feet) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths must be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the member of berths need not exceed 6.

(6) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and, where practicable, must be insulated from undue noise heat, and odors.

PART 76—FIRE PROTECTION EQUIPMENT

59. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

60. Section 76.05–20 is revised to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems must be installed, as required by table 76.05–1(a) on all self-propelled vessels and on all barges with sleeping accommodations for more than subpart persons. Previously approved installations may be retained as long as they are maintained in good condition

to the satisfaction of the Officer in Charge, Marine Inspection.

§ 76.05–30 [Removed]

61. Section 76.05–30 is removed.

62. In § 76.10–10, paragraphs (j–1), (j–2), and (l) are removed, paragraph (k) is redesignated as paragraph (m), paragraph (j) is revised, and new paragraphs (k), (l), and (n) are added to read as follows:

§ 76.10–10 Fire hydrants and hose.

* * * * *

(j) Each firehose on each hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements in subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(k) Firehose nozzles previously approved under subpart 162.027 of this chapter must have low-velocity water spray applicators also previously approved under subpart 162.027 of this chapter as follows—

(1) In accommodation and service areas—two firehoses; and

(2) In each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more—each firehose. The length of each applicator must be not more than 1.8 meters (6 feet).

(l) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (k) of this section.

* * * * *

(n) Firehose and couplings must be as follows:

(1) Couplings must be of brass, bronze, or other equivalent metal. National Standard firehose coupling threads must be used for the 38 millimeters (1½ inch) and 64 millimeters (2½ inch) sizes.

(2) Each section of firehose must be lined commercial firehose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification ZZ–H–451E. Hose that bears the label of Underwriters' Laboratories, Inc. as lined firehose is accepted as conforming to this requirement.

63. In § 76.10–90, paragraph (a)(7) is removed and paragraph (a)(6) is revised to read as follows:

§ 76.10–90 Installations contracted for prior to May 26, 1995.

(a) * * *

(6) Firehose nozzles and low-velocity spray applicators must meet the requirements of §§ 76.10–10(j), 76.10–10(k), and 76.10–10(l)

64. Subpart 76.13 consisting of § 76.13–1 is revised to read as follows:

Subpart 76.13—Steam Smothering Systems

§ 76.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

65. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

66. Section 77.27–1 is revised to read as follows:

§ 77.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over to ocean or coastwise service, and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic deep-sea sounding apparatus.

PART 78—OPERATION

67. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 78.03 (§ 78.03–1)—[Removed]

68. Subpart 78.03 consisting of § 78.03–1 is removed.

Subpart 78.20 (§ 78.20–1)—[Removed]

69. Subpart 78.20 consisting of § 78.20–1 is removed.

Subpart 78.25 (§ 78.25–1)—[Removed]

70. Subpart 78.25 consisting of § 78.25–1 is removed.

71. Subpart 78.35 consisting of § 78.35–1 is revised to read as follows:

Subpart 78.35—Communication Between Deckhouses

§ 78.35–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

72. Section 78.37–3 is revised to read as follows:

§ 78.37–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 78.47–67 [Removed]

73. Section 78.47–67 is removed.

74. Subpart 78.53 consisting of 78.53–1 and 78.53–5 is revised to read as follows:

Subpart 78.53—Placard of Lifesaving Signals

Subpart 78.53—Placard of Lifesaving Signals

Sec.
78.53–1 Application.
78.53–5 Availability.

§ 78.53–1 Application.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 78.53–5 Availability.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

75. Section 78.57–1 is revised to read as follows:

§ 78.57–1 All personnel must comply.

All licensed masters, officers, and certificated seamen on United States vessels shall strictly comply with routing instructions issued by competent naval authority.

Subpart 78.5 (§ 78.75–1)—[Removed]

76. Subpart 78.75 consisting of § 78.75–1 is removed.

Subpart 78.80 (§ 78.80–1—78.80–35)—[Removed]

77. Subpart 78.80 consisting of § 78.80–1 through78.80–35 is removed.

§ 78.83–1 [Amended]

78. In § 78.83–1, paragraph (a) is amended by removing the phrase, ''(other than power-operated industrial trucks when subject to subpart 78.80 of this part)''.

Subpart 78.85 (§ 78.85–1)—[Removed]

79. Subpart 78.85 consisting of § 78.85–1 is removed.

PART 92—CONSTRUCTION AND ARRANGEMENT

80. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277: 49 CFR 1.46.

§ 92.01–13 [Removed]

81. Section 92.01–13 is removed.

82. Subpart 92.20 is revised to read as follows:

Subpart 92.20—Accommodations for Officers and Crew

Sec.
92.20–1 Application.
92.20–5 Intent.
92.20–10 Location of crew spaces.
92.20–15 Construction.
92.20–20 Sleeping accommodations.
92.20–25 Washrooms and toilet rooms.
92.20–30 Messrooms.
92.20–35 Hospital space.
92.20–40 Other spaces.
92.20–45 Lighting.
92.20–50 Heating and cooling.
92.20–55 Insect screens.
92.20–90 Vessels contracted for prior to November 19, 1952.

Subpart 92.20—Accommodations for Officers and Crew

§ 92.20–1 Application.

(a) The provisions of this subpart apply to all vessels of 100 gross tons and over contracted for on or after November 19, 1952. Vessels of 100 gross tons and over contracted for prior to November 19, 1952 must meet the requirements of § 92.20–90.

(b) Vessels of less than 100 gross tons must meet the applicable requirements of this subpart insofar as is reasonable and practicable.

§ 92.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

§ 92.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purposes of this paragraph, the vessel's length must be as defined in § 43.15-1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors, or hatches between crew spaces and chain lockers, or machinery spaces.

§ 92.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable, and sanitary condition.

§ 92.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer must be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which shall berth more than 4 persons.

(c) Each room must be of such size that there is at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must be not less than 190 centimeters (75 inches). In measuring sleeping accommodations, any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 92.20–25 Washrooms and toilet rooms.

(a) There must be provided at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 92.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 92.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or

more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat shall be provided.

(e) On vessels in which the crew is berthed in single occupancy rooms, a hospital space will not be required, provided that one room is designated and fitted for use as a treatment or isolation room. This room must meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 92.20–40 Other spaces.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, inducing at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on an open deck to which the crew has access when off duty.

§ 92.20–45 Lighting.

Each berth must have a light.

§ 92.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21° C (70° F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger, or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 92.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 92.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of less than 100 gross tons, contracted for prior to November 19, 1952, must meet the general intent of § 92.20–5 and in addition must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction.

(b) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction, provided that in no case will a greater departure from the standards of §§ 92.20–5 through 92.20–55 be permitted than presently exists.

(c) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured.

(3) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Washbasins, showers, and bathtubs if substituted for showers, must be equipped with adequate plumbing including hot and cold running water.

(3) Each crewmember must have a separate berth, and berths may not be placed more than 2 high.

(4) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the number of berths need not exceed 6.

(5) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

PART 95—FIRE PROTECTION EQUIPMENT

83. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

84. In § 95.05–10, paragraph (g) is removed and paragraphs (a), introductory text, (b) and (c) are revised to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

(a) Approved fire extinguishing systems may be used or required in locations delineated in this section on the following vessels. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

(b) A fixed carbon dioxide or other approved system must be installed in all cargo compartments and tanks for combustible cargo, except for vessels engaged exclusively in the carriage of coal or grain in bulk. For cargo compartments and tanks fitted with a fixed carbon dioxide or other approved system a deck foam system is not required, instead of the carbon dioxide system or other approved system, the following systems may be used or required in special cases:

(1) A fixed foam system may be used in cargo tanks.

(2) A water sprinkling system may be required, and the details of such system will be subject to special approval, in cases where a cargo is normally accessible and is considered to be a part of the working or living quarters.

(3) Spaces ''specially suitable for vehicles'' must be fitted with an approved carbon dioxide system. Alternately, the Commandant may permit the installation of an approved water sprinkler system or other suitable system.

(c) On vessels other than motorboats, a fixed carbon dioxide or other approved system must be installed in all lamp and paint lockers, oil rooms, and similar spaces.

* * * * *

§ 95.05–20 [Removed]

85. Section 95.05–20 is removed.

86. In § 95.10–10, paragraphs (i–1), (i–2), and (l) are removed, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, paragraph (i) is revised and new paragraphs (j), (k), and (n) are added to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(i) Each firehose on each hydrant must have a combination solid stream and water spray firehose nozzle approved under subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) In each propulsion machinery space containing an oil fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more, each firehose having a combination nozzle previously approved under subpart 162.027 of this chapter must have a low-velocity water spray applicator that is also previously approved under subpart 162.027 of this chapter. The length of the applicator must be less than 1.8 meters (6 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

(n) Firehose and couplings must be as follows:

(1) Couplings shall be of brass, bronze, or other equivalent metal. National Standard firehose coupling threads must be used for the 38 millimeters (1 ½ inch) and 64 millimeters (2 ½ inch) sizes.

(2) Where 19 millimeters (¾ inch) hose is permitted by table 95.10–5(a), the hose and couplings shall be of good commercial grade.

(3) Each section of firehose must be lined commercial firehose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification ZZ–H–451E. Hose that bears the label of Underwriters' Laboratories, Inc. as lined firehose is accepted as conforming to this requirement.

87. In § 95.10–90, the designation ''(a)'' is removed from paragraph (a), paragraphs (a)(5) and (a)(6) are removed, paragraphs (a)(1) through (a)(4) are redesignated as paragraphs (a) through (d), respectively, and new paragraph (e) is added to read as follows:

§ 95.10–90 Installations contracted for prior to May 26, 1965.

* * * * *

(e) Firehose nozzles and low-velocity spray applicators must meet the requirements of 95.10–10(i), 95.10–10(j), and 95.10–10(k).

88. Subpart 95.13 consisting of § 95.13–1 is revised to read as follows:

Subpart 95.13—Steam Smothering Systems

§ 95.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

89. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

90. Section 96.27–1 is revised to read as follows:

§ 96.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic sounding apparatus.

PART 97—OPERATIONS

91. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 97.03 (§ 97.03–1)—[Removed]

92. Subpart 97.03 consisting of § 97.03–1 is removed.

Subpart 97.17 (§ 97.17–1)—[Removed]

93. Subpart 97.17 consisting of § 97.17–1 is removed.

Subpart 97.23 (§ 97.23–1)—[Removed]

94. Subpart 97.23 consisting of § 97.23–1 is removed.

95. Subpart 97.33 consisting of § 97.33–1 is revised to read as follows:

Subpart 97.33—Communication Between Deckhouses

§ 97.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

96. Section 97.35–3 is revised to read as follows:

§ 97.35–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of

validity of the vessel's certificate of inspection.

§ 97.35–10 [Removed]

97. Section 97.35–10 is removed.

§ 97.37–45 [Removed]

98. Section 97.37–45 is removed.

99. Subpart 97.43 consisting of §§ 97.43–1 and 97.43–5 is revised to read as follows:

Subpart 97.43—Placard of Lifesaving Signals

Sec.
97.43–1 Application.
97.43–5 Availability.

Subpart 97.43—Placard of Lifesaving Signals

§ 97.43–1 Application.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 97.43–5 Availability.

On all vessels to which the subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

100. Section 97.47–1 is revised to read as follows:

§ 97.47–1 All persons must comply.

All licensed masters, officers, and certificated seamen on U.S. vessels must strictly comply with routing instructions issued by competent naval authority.

Subpart 97.60 (§ 97.60–1)—[Removed]

101. Subpart 97.60 consisting of § 97.60–1 is removed.

Subpart 97.70 (§ 97.70–1—97.70–35)—[Removed]

102. Subpart 97.70 consisting of §§ 97.70–1 through 97.70–35 is removed.

Subpart 97.75 (§ 97.75–1)—[Removed]

103. Subpart 97.75 consisting of § 97.75–1 is removed.

§ 97.80–1 [Amended]

104. In § 97.80–1, paragraph (a) is amended by removing the phrase, ''(other than power-operated industrial trucks when subject to subpart 97.70 of this part)''.

PART 108—DESIGN AND EQUIPMENT

105. The authority citation for part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

§ 108.403 [Amended]

106. In § 108.403, paragraph (b) is amended by removing the words ''water spray,''.

107. In § 108.425, paragraph (c) and the introductory text of paragraph (d) are revised as follows:

§ 108.425 Firehoses and associated equipment.

* * * * *

(c) Each nozzle for a firehose in a fire main system must be a combination solid stream and water spray firehose nozzle that is approve under subpart 162.027. Combination solid stream and water spray nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(d) A combination solid stream and water spray firehose nozzle previously approved under subpart 162.027 of this chapter, must have a low-velocity water spray applicator also previously approved under subpart 162.027 of this chapter when installed in—

* * * * *

108. The heading of subpart F is revised to read as follows:

Subpart F—Cranes

§ 108.611 [Removed]

109. Section 108.611 is removed.

§ 108.613 [Removed]

110. Section 108.613 is removed.

0108.615 [Removed]

111. Section 108.615 is removed.

112. Section 108.659 is revised to read as follows:

§ 108.659 Lifesaving signal instructions.

On all vessels to which this subpart applies, there must be readily available to the offshore installation manager, master, or person in charge a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 109—OPERATIONS

113. The authority citation for part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

114. The heading of Subpart F is revised to read as follows:

Subpart F—Cranes

§ 109.529 [Removed]

115. Section 109.529 is removed.

§ 109.531 [Removed]

116. Section 109.531 is removed.

§ 109.533 [Removed]

117. Section 109.533 is removed.

§ 109.535 [Removed]

118. Section 109.535 is removed.

§ 109.537 [Removed]

119. Section 109.537 is removed.

§ 109.539 [Removed]

120. Section 109.539 is removed.

§ 109.558 [Removed]

121. Section 109.558 is removed.

§ 109.583 [Removed]

122. Section 109.583 is removed.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

123. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

124. In § 153.9, footnote 1 is removed and the introductory text of paragraph (a) is revised to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) *Application for a vessel whose flag administration is signatory to MARPOL 73/78 and issues IMO Certificates.* A person who desires a Certificate of Compliance endorsed to carry a cargo in table 1 of this part, as described in § 153.900 of this part, must request the endorsement from the cognizant Officer in Charge, Marine Inspection and have aboard the vessel copies of IMO Certificates issued by the vessel's administration and—

* * * * *

§ 153.16 [Amended]

125. In § 153.16, the introductory text is amended by replacing ''Certificate of Compliance endorsed with the name of a cargo'' with ''Certificate of Compliance endorsed to carry a cargo''.

§ 153.808 [Amended]

126. Section 153.808 is amended by replacing ''Certificate of Compliance endorsed with the name of a cargo,'' with ''Certificate of Compliance endorsed to carry a cargo''.

127. Section 153.809 is revised to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

The owner of a foreign flag vessel wishing to have the Coast Guard conduct a Certificate of Compliance examination, as required by § 153.808, must proceed as follows:

(a) Notify the Officer in Charge, Marine Inspection of the port where the vessel is to be inspected at least 7 days before the vessel arrives and arrange the exact time and other details of the examination. This notification is in addition to any other pre-arrival notice to the Coast Guard required by other regulations, but may be concurrent with the endorsement application in § 153.9, and must include—

(1) The name of the vessel's first U.S. port of call;

(2) The date that the vessel is scheduled to arrive;

(3) The name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in table 1 of this part that are on board the vessel.

(b) Before the examination required by § 153.808 is begun, make certain that the following plans are on board the vessel and available to the Marine Inspector. These plans include—

(1) A general arrangement (including the location of fire fighting, safety, and lifesaving gear);

(2) A capacity plan;

(3) A schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(4) A schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

128. In § 153.902, paragraphs (b) and (c) are revised to read as follows:

§ 253.902 Expiration and invalidation of the Certificate of Compliance.

* * * * *

(b) The endorsement of a Certificate of Compliance under this part is invalid if the vessel does not have a valid IMO Certificate of Fitness.

(c) The endorsement on a Certificate of Compliance invalidated under paragraph (b) of this section, becomes valid again once the ship has the IMO Certificate of Fitness revalidated or reissued.

PART 160—LIFESAVING EQUIPMENT

129. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.018 §§ 160.018–1—160.018–9—[Removed]

130. Subpart 160.018 consisting of §§ 160.018–1 through 160.018–9 is removed.

Subpart 160.034 §§ 160.034–1—160.034–5—[Removed]

131. Subpart 160.034 consisting of §§ 160.034–1 through 160.034–5 is removed.

PART 162—ENGINEERING EQUIPMENT

132. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 39 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

133. Subpart 162.027 consisting of §§ 162.027–1 through 162.027–3 is revised to read as follows:

Subpart 172.027—Combination Solid Stream and Water Spray Firehose Nozzles

Sec.

162.027–1 Incorporation by reference.

162.027–2 Design, construction, testing and marking requirements.

162.027–3 Approval procedures.

Subpart 162.027—Combination Solid Stream and Water Spray Firehose Nozzles

§ 162.027–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW, Washington, DC 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 as follows:

American Society for Testing and Materials (ASTM)
1916 Race Street, Philadelphia, PA 19103

ASTM F 1546–94, Standard Specification for Firehose Nozzles—162.027–2; 162.027–3

§ 162.027–2 Design, construction, testing and marking requirements.

(a) Each combination solid stream and water spray firehose nozzle required to be approved under the provisions of this subpart must be designed, constructed, tested, and marked in accordance with the requirements of ASTM F 1546–94.

(b) All inspections and tests required by ASTM F 1546–94 must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent Laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (G–MMS).

(c) The independent laboratory shall prepare a report on the results of the testing and shall furnish the manufacturer with a copy of the test report upon completion of the testing required by ASTM F 1546–94.

§ 162.027–3 Approval procedures.

(a) Firehose nozzles designed, constructed, tested, and marked in accordance with ASTM F 1546–94 are considered to be approved under the provisions of this chapter.

(b) Firehose nozzles designed, constructed, tested and marked in accordance with the provisions of this subpart in effect prior to June 24, 1996, are considered to be approved under the provisions of this chapter.

PART 164—MATERIALS

134. The authority citation for part 164 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 164.016 § 164.016–1—164.016–5—[Removed]

135. Subpart 164.016 consisting of §§ 164.016–1 through 164.016–5 is removed.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

136. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 167.40–20 [Amended]

137. In § 167.40–20, the words ''in addition to the ordinary deep-sea hand lead'' are removed.

§ 167.40–35 [Removed]

138. Section 167.40–35 is removed.

139. In § 167.45–40, paragraphs (c–1) and (c–2) are removed and paragraphs (a), (b) and (c) are revised to read as follows:

§ 167.45–40 Fire fighting equipment on nautical school ships using oil as fuel.

(a) In each boiler room and in each of the machinery spaces of a nautical school ship propelled by steam, in which a part of the fuel-oil installation is situated, 2 or more approved fire extinguishers of the foam type of not less than 9.5 liters (2½ gallons) each or 2 or more approved fire extinguishers of the carbon dioxide type of not less than 33 kilograms (15 pounds) each must be placed where accessible and ready for immediate use. On a nautical school ship of 1,000 gross tons and under, only 1 of the fire extinguishers may be required.

In boiler and machinery spaces, at least 2 fire hydrants must have a firehose of a length that allows each part of the boiler and machinery spaces to be reached by water from a combination solid stream and water spray firehose nozzle.

(c) Each firehose under paragraph (b) of this section must have a combination solid stream and water spray firehose nozzle that meets subpart 162.027 of this chapter. Combination nozzles and low-velocity water spray applicators previously approved under subpart 162.027 of this chapter may remain so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

§ 167.45–55 [Removed]

140. Section 167.45–55 is removed.

§ 167.65–3 [Removed]

141. Section 167.65–3 is removed.

§ 167.65–10 [Removed]

142. Section 167.65–10 is removed.

143. Section 167.65–15 is revised to read as follows:

§ 167.65–15 Routing instructions; strict compliance with.

All licensed masters, officers, and certificated seamen on nautical school ships must strictly comply with routing instructions issued by competent naval authority.

§ 167.65–30 [Removed]

144. Section 167.65–30 is removed.

145. Section 167.65–50 is revised to read as follows:

§ 167.65–50 Posting placards of lifesaving signals.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the life saving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

146. The authority citation for part 168 is revised to read as follows:

Authority: 46 U.S.C. 3305, 3306; 49 CFR 1.46.

147. Subpart 168.15 is revised to read as follows:

Subpart 168.15—Accommodations

Sec.
168.15–1 Intent.
168.15–5 Location of crew spaces.
168.15–10 Construction.
168.15–15 Size.
168.15–20 Equipment.
168.15–25 Washrooms.
168.15–30 Toilet rooms.
168.15–35 Hospital space.
168.15–40 Lighting.
168.15–45 Heating and cooling.
168.15–50 Ventilation.
168.15–55 Insect screens.
168.15–60 Inspection.

Subpart 168.15—Accommodations

§ 168.15–1 Intent.

The accommodations provided for members of the crew, passengers, cadets, students, instructors or any other persons at any time quartered on board a vessel to which this part applies must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged and insulated from undue noise, heat and odors.

§ 168.15–5 Location of crew spaces.

(a) Quarters must be located so that sufficient fresh air and light are obtainable compatible with accepted practice or good arrangement and construction.

(b) Unless approved by the Commandant, quarters, must not be located forward of the collision bulkhead, nor may such section or sections of any deck head occupied by quarters be below the deepest load line.

§ 168.15–10 Construction.

(a) The accommodations provided must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

(b) All accommodations must be constructed and arranged so that they can be kept in a clean, workable, and sanitary condition.

§ 168.15–15 Size.

(a) Sleeping accommodations must be divided into rooms, no one of which may berth more than subpart persons. The purpose for which each space is to be used and the number of persons it may accommodate, must be marked outside the space.

(b) Each room must be of such size that there is at least 1.8 square meters (20 square feet) of deck area and a volume of at least 4.2 cubic meters (150 cubic feet) for each person accommodated. In measuring sleeping quarters, any furnishings contained therein are not to be deducted from the total volume or from the deck area.

§ 168.15–20 Equipment.

(a) Each person shall have a separate berth and not more than 1 berth may be placed above another. The berths must be of metal framework. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck, and the bottom of the upper must not be less than 76 centimeters (30 inches) from both the bottom of the lower and from the deck overhead. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(b) A metal locker must be provided for each person accommodated in a room.

§ 168.15–25 Washrooms.

(a) There must be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each subpart persons or fraction thereof for all persons who do not occupy rooms to which private or semi-private facilities are attached.

(b) All wash basins and showers must be equipped with adequate plumbing, including hot and cold running fresh water.

§ 168.15–30 Toilet rooms.

(a) There must be provided 1 toilet for each 10 persons or fraction thereof to be accommodated who do not occupy rooms to which private facilities are attached.

(b) The toilet rooms must be located convenient to the sleeping quarters of the persons to which they are allotted but must not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 168.15–35 Hospital space.

(a) Each vessel must be provided with a hospital space. This space must be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 persons, but the number of berths need not exceed 6.

(e) The hospital must have a toilet, wash basin, and bathtub or shower conveniently located. Other necessary suitable equipment of a sanitary type such as a clothes locker, a table and a seat must be provided.

§ 168.15–40 Lighting.

All quarters, including washrooms, toilet rooms, and hospital spaces, must be adequately lighted.

§ 168.15–45 Heating and cooling.

All quarters must be adequately heated and cooled in a manner suitable to the purpose of the space.

§ 168.15–50 Ventilation.

(a) All quarters must be adequately ventilated in a manner suitable to the purpose of the space and route of the vessel.

(b) When mechanical ventilation is provided for sleeping rooms, washrooms, toilet rooms, hospital spaces, and messrooms, these spaces must be supplied with fresh air equal to at least 10 times the volume of the room each hour.

§ 168.15–55 Screening.

Provision must be made to protect the quarters against the admission of insects.

§ 168.15–60 Inspection.

The Officer in Charge, Marine Inspection, shall inspect the quarters of every such vessel at least once in each month or at such time as the vessel enters an American port and shall satisfy himself that such vessel is in compliance with the regulations in this part.

PART 169—SAILING SCHOOL VESSELS

148. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.321 [Removed]

149. Section 169.321 is removed.

§ 169.742 [Removed]

150. Section 169.742 is removed.

PART 189—INSPECTION AND CERTIFICATION

151. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; 49 CFR 1.46.

§ 189.60–30 [Removed]

152. Section 189.60–30 is removed.

PART 190—CONSTRUCTION AND ARRANGEMENT

153. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–13 [Removed]

154. Section 190.01–13 is removed.

155. Subpart 190.20 is revised to read as follows:

Subpart 190.20—Accommodations for Officers, Crew, and Scientific Personnel

Sec.
190.20–1 Application.
190.20–5 Intent.
190.20–10 Location of crew spaces.
190.20–15 Construction.
190.20–20 Sleeping accommodations.
190.20–25 Washrooms and toilet rooms.
190.20–30 Messrooms.
190.20–35 Hospital space.
190.20–40 Other spaces.
190.20–45 Lighting.
190.20–50 Heating and cooling.
190.20–55 Insect screens.
190.20–90 Vessels contracted for prior to March 1, 1968.

Subpart 190.20—Accomodations for Officers, Crew, and Scientific Personnel

§ 190.20–1 Application.

(a) Except as noted below, the provisions of this subpart apply to all vessels contracted for on or after March 1, 1968.

(b) Vessels contracted for prior to March 1, 1968, must meet the requirements of § 190.20–90.

§ 190.20–5 Intent.

(a) The accommodations provided for officers, crew, and scientific personnel on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat, and odors.

(b) Provided the intent of this subpart is met, consideration may be given by the Officer in Charge, Marine Inspection to relax the requirements relating to the size and separation of accommodations for scientific personnel.

§ 190.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designated summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For purpose of this paragraph, the vessel's length shall be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 190.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so they can be kept in a clean, workable and sanitary condition.

§ 190.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer must be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which must berth more than 4 persons.

(c) Each room must be of such size that there are at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must be not less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 190.20–25 Washrooms and toilet rooms.

(a) There must be provided at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew to be accommodated who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing. Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 190.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 190.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with regard to the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6. Where all single occupancy rooms are provided, the requirement for a separate hospital may be withdrawn, provided that 1 stateroom is fitted with a bunk accessible from both sides.

(e) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table and a seat must be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms, a hospital space will not be required, provided that 1 room must be designated and fitted with use as a treatment or isolation room. This room must meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 190.20–40 Other spaces.

Each vessel shall have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on the open deck to which the crew has access when off duty.

§ 190.20–45 Lighting.

Each berth must have a light.

§ 190.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 190.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 190.20–90 Vessels contracted for prior to March 1, 1968.

Existing structures, arrangements, materials, and facilities previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standards as the original construction, provided that in no case will a greater departure from the standards of §§ 190.20–5 through 190.20–55 be permitted than presently exists.

PART 193—FIRE PROTECTION EQUIPMENT

156. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 193.05–20 [Removed]

157. Section 193.05–20 is removed.

158. In § 193.10–10, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, paragraphs (i–1) and (i–2) are removed, paragraphs (d) and (i) are revised, and new paragraphs (j) and (k) are added to read as follows:

§ 193.10–10 Fire hydrants and hose.

* * * * *

(d) Fire hydrants must be of sufficient number and so located that any part of the vessel, other than main machinery spaces, may be reached with at least 2 streams of water from separate outlets, at least one of which must be from a single length of hose. In main machinery spaces, all portions of such spaces must be capable of being reached by at least 2 streams of water, each of which must be from a single length of hose from separate outlets; however, this requirement need not apply to shaft alleys containing no assigned space for the stowage of combustibles. Fire hydrants must be numbered as required by § 196.37–15 of this subchapter.

* * * * *

(i) Each fire hydrant must have at least 1 length of firehose. Each firehose must have a combination solid stream and water spray nozzle that is approved under subpart 162.027 of this subchapter, except 19 millimeters (3/4 inch) hose may have a garden hose nozzle that is bronze or metal with strength and corrosion resistance equivalent to bronze. Combination solid stream and water spray nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) When the firehose nozzle in the below locations was previously approved under subpart 162.027 of this chapter, a low-velocity water spray applicator, also previously approved under subpart 162.027, of this chapter must be installed as follows:

(1) At least 1 length of firehose on each fire hydrant outside and in the immediate vicinity of each laboratory;

(2) Each firehose in each propulsion machinery space containing oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel of 1000 gross tons or more—the length of each applicator must be 1.2 meters (4 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

159. Section 193.10–90 is revised to read as follows:

§ 193.10–90 Installations contracted for prior to March 1, 1968.

Installations contracted for prior to March 1, 1968, must meet the following requirements:

(a) Except as specifically modified by this paragraph, vessels must comply with the requirements of §§ 193.10–5 through 193.10–15 insofar as the number and general type of equipment is concerned.

(b) Existing equipment, except firehose nozzles and low-velocity water spray applicators, previously approved but not meeting the applicable requirements of §§ 193.10–5 through 193.10–15, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs, alterations, and replacements may be permitted to the same standards as the original installations. However, all new installations or major replacements must meet the applicable requirements in this subpart for new installations.

(c) Vessels must comply with the general requirements of § 193.10–5 (c) through (g), § 193.10–10 (d) through (m), and § 193.10–15 insofar as is reasonable and practicable.

(d) Each firehose nozzle must meet § 193.10–10(i), and each low-velocity water spray applicator must meet § 193.10–10(j).

PART 196—OPERATIONS

160. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 196.03 (§ 196.03–1)—[Removed]

161. Subpart 196.03 consisting of § 196.03–1 is removed.

Subpart 196.17 (§ 196.17–1)—[Removed]

162. Subpart 196.17 consisting of § 196.17–1 is removed.

Subpart 196.18 (§ 196.18–1)—[Removed]

163. Subpart 196.18 consisting of § 196.18–1 is removed.

Subpart 196.23 (§ 196.23–1)—[Removed]

164. Subpart 196.23 consisting of § 196.23–1 is removed.

§ 196.27–10 [Removed]

165. Section 196.27–10 is removed.

166. Subpart 196.33 consisting of § 196.33–1 is revised to read as follows:

Subpart 196.33—Communication Between Deckhouses

§ 196.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

167. Section 196.35–3 is revised to read as follows:

§ 196.35–3 Logbooks and records.

(a) The master or person in charge of an oceanographic research vessel that is required by 46 U.S.C. 11301 to have an official logbook may maintain the logbook on form CG–706 or in the owner's format for an official logbook. Such logs must be kept available for a review for a period of 1 year after the date to which the records refer, or for the period of validity of the vessel's current certificate of inspection, whichever is longer. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have a official logbook, shall maintain, on aboard, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 196.35–10 [Removed]

168. Section 196.35–10 is removed.

§ 196.37–45 [Removed]

169. Section 169.37–45 is removed.

170. Subpart 196.43 consisting of §§ 196.43–1 and 196.43–5 is revised to read as follows:

Subpart 196.43—Placard of Lifesaving Signals

Sec.
196.43–1 Application.
196.43–5 Availability.

Subpart 196.43—Placard of Lifesaving Signals

§ 196.43–1 Application.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise, or Great Lakes service.

§ 196.43–5 Availability.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

Subpart 196.60 (§ 196.60–1)—[Removed]

171. Subpart 196.60 consisting of § 196.60–1 is removed.

Subpart 196.75 (§ 196.75–1)—[Removed]

172. Subpart 196.75 consisting of § 196.75–1 is removed.

Dated: May 10, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–12428 Filed 5–22–96; 8:45 am]

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federal register

Thursday
May 23, 1996

Part IV

The President

Presidential Determination No. 96–20 of April 1, 1996
Presidential Determination No. 96–21 of April 4, 1996
Presidential Determination No. 96–22 of April 18, 1996
Presidential Determination No. 96–23 of April 30, 1996
Presidential Determination No. 96–24 of May 9, 1996
Memorandum of April 1, 1996
Memorandum of May 10, 1996

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

Presidential Documents

Title 3—

The President

Memorandum of April 1, 1996

Delegation of Responsibilities Under Section 1208 of Title XII of Public Law 104–106

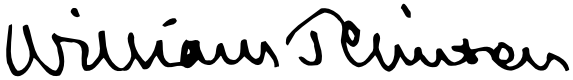
Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the authorities and duties vested in the President under Section 1208 of Title XII of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), to be exercised in consultation with the Secretary of Defense.

Any reference in this memorandum to any Act or delegation of authority shall be deemed to be a reference to such Act or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, April 1, 1996.

[FR Doc. 96–12935
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–20 of April 1, 1996

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1995, title VI, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Public Law 104–107, (''the Act''), I hereby:

(1) Certify that it is in the national interest to suspend the application of the following provisions of law until June 15, 1996:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

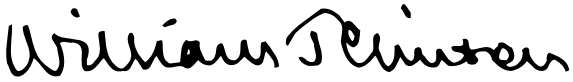
(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization, the Palestinian Authority, and successor entities are abiding by the commitments described in section 604(b)(4) of the Act.

(3) certify that funds provided pursuant to the exercise of this authority and the authorities under section 583(a) of Public Law 103–236 and section 3(a) of Public Law 102–125 have been used for the purposes for which they were intended.

You are authorized and directed to transmit this determination to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, April 1, 1996.

[FR Doc. 96–12936
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–21 of April 4, 1996

Determination Under the Heading ''International Organizations and Programs'' in Title IV of the Foreign Operations Appropriations Act for FY 1996: U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

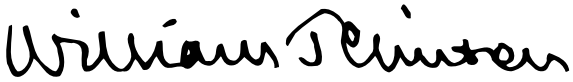
Pursuant to the requirements set forth under the heading ''International Organizations and Programs'' in Title IV of the Foreign Operations Appropriations Act, 1996 (Public Law 104–107), I determine and certify that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework;

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North-South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

You are authorized and directed to report these determinations and certifications to the Congress and to publish them in the Federal Register.



THE WHITE HOUSE,
Washington, April 4, 1996.

MEMORANDUM OF JUSTIFICATION FOR DETERMINATIONS AND CERTIFICATIONS UNDER THE HEADING ''INTERNATIONAL ORGANIZATIONS AND PROGRAMS'' IN TITLE IV OF THE FOREIGN OPERATIONS APPROPRIATIONS ACT, 1996 IN CONNECTION WITH THE U.S. CONTRIBUTION TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

Pursuant to the requirements set forth under the heading ''International Organizations and Programs'' in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104–107), I have determined that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

The justification for these determinations is set forth below.

(a)—Designation of ROK Company

In section I of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994, the two parties stated that they would cooperate in replacing the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants. The U.S. further stated that it would undertake to make arrangements for the provision of the LWR project to the DPRK, including organizing under its leadership an international consortium to finance and supply the project. This organization, the Korean Peninsula Energy Development Organization (KEDO), was created on March 9, 1995, by agreement of the U.S., Japan, and the ROK. These parties have agreed that the ROK will assume the central role in financing and building the LWR project.

On June 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR supply agreement between KEDO and the DPRK, signed December 15, 1995 in New York City.) On the same date as the Kuala Lumpur statement (June 13, 1995), the KEDO Executive Board decided by Board resolution that an ROK reactor model (Ulchin ¾) would be built in the DPRK by an ROK firm. The Executive Board resolution designated the Korean Electric Power Corporation (KEPCO) as the firm with which KEDO would begin negotiating a prime contract for the light-water reactor project. These negotiations are under way.

(b)—DPRK Maintenance of the Freeze

Section I(3) of the U.S.-DPRK Agreed Framework provides for the immediate freeze and eventual dismantlement of all graphite-moderated reactors and related facilities in the DPRK. Within this context, the DPRK agreed to implement the freeze on its nuclear facilities within one month after the signing of the Agreed Framework and to allow the International Atomic Energy Agency (IAEA) to monitor the freeze on its facilities, with the full cooperation of the DPRK. In addition, the U.S. and DPRK agreed to cooperate in finding a method to store safely the spent fuel from the DPRK's 5 MW(e) experimental reactor during the construction of the LWR project, and to

dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

Since November 1994, all of North Korea's graphite-moderated nuclear facilities have been frozen. Specifically, this means no refueling or operation of the 5MW research reactor; no construction on the 50 and 200 MW reactors; no reprocessing and sealing of the reprocessing facility; no operation of the fuel fabrication plant; and no construction of new graphite-moderated reactors or related facilities. The IAEA has maintained a continuous presence at the Nyongbyon nuclear facility and has continued with inspection activities related to verifying and monitoring the freeze in the DPRK according to the terms of the Agreed Framework. In addition to IAEA monitoring activities, the United States continues to monitor the freeze through National Technical Means.

With the successful conclusion of the December 15, 1995 agreement on the supply of light-water reactors (LWRs) to the DPRK, signed between the DPRK and KEDO in New York City, the IAEA will resume ad hoc and routine inspections under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. The IAEA and DPRK meet periodically to discuss any outstanding safeguards issues that arise, most recently on January 22, 1996. During this meeting, both sides agreed to measures for safely storing the DPRK's spent nuclear fuel from its 5 MW(e) research reactor. When the first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

In January 1995, the U.S. and DPRK agreed on the method for safely storing the DPRK's spent nuclear fuel as an interim step before it is shipped out of the DPRK, as defined in the Agreed Framework. U.S. technical experts have been in the DPRK since July 1995 preparing the fuel for canning in a cooperative joint effort with the DPRK. Actual canning is expected to commence soon and will last approximately three months.

(c)—North-South Dialogue and the Joint Declaration

The U.S.-DPRK Agreed Framework provides that ''the DPRK will engage in North-South dialogue.'' Since then, the U.S. has taken steps to support South Korean initiatives toward the North and to encourage the DPRK to fulfill its commitment to engage in dialogue as soon as possible. In all of our bilateral contacts with the DPRK, the U.S. has made clear that improvement in North-South relations is the key to peace and security on the Korean peninsula, and a requirement if U.S.-DPRK bilateral relations are to continue to move forward. Ambassador Robert L. Gallucci, during his tenure as Chairman of the Senior Steering Committee on Korea, had frequent occasion to raise the issue of North-South relations in his correspondence with his North Korean counterpart, First Vice Minister of Foreign Affairs Kang Sok Ju. Deputy Assistant Secretary of State Thomas Hubbard raised the North-South issue repeatedly during the May-June 1995 negotiations with the North Koreans in Kuala Lumpur on the LWR supply agreement. Most recently, Mr. Hubbard raised this issue when he met with North Korean Ambassador-at-Large Ho Jung in December 1995. Finally, working level officials have repeatedly stressed to their North Korean counterparts the importance of the DPRK improving relations with the South. Over the last year, these points have been made at all three rounds of U.S.-DPRK negotiations on the opening of liaison offices, and repeatedly in contacts with officials of the DPRK Mission to the UN.

In support of ROK initiatives, we have conveyed South Korean positions—and U.S. support for those positions—to the DPRK and others. At South Korea's request we have raised several particular issues with the DPRK, sometimes with positive effect. The South Korean government has expressed its appreciation for these U.S. efforts. During this period North and South Korea held a series of bilateral meetings in Beijing that produced an agreement whereby the South provided 150,000 tons of rice to the North as a grant. In December 1995, the DPRK released the crew of a South Korean

fishing vessel which strayed into North Korean waters earlier in the year, a step which the ROK had been urging the DPRK to take.

On January 1, 1992, the Republic of Korea and the Democratic People's Republic of Korea issued the Joint Declaration of the Denuclearization of the Korean Peninsula. The provisions of the Joint Declaration state that the North and South:

—shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;

—shall use nuclear energy solely for peaceful purposes;

—shall not possess nuclear reprocessing and uranium enrichment facilities, and;

—in order to verify the denuclearization of the Korean Peninsula, shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by the South-North Nuclear Control Commission which shall be established within one month of the effectuation of this joint declaration.

The DPRK and the ROK held a series of South-North Joint Nuclear Control Commission meetings in early 1992 as specified in the Joint Declaration, but these were discontinued as relations between the two Korean states worsened and the DPRK threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and refused to cooperate with the IAEA. As a result, the absence of sustained governmental talks between the ROK and DPRK has delayed further implementation of the Denuclearization Declaration.

The United States has, however, taken steps to encourage DPRK compliance with the Joint Declaration by encouraging North-South dialogue and ensuring DPRK implementation of the Agreed Framework. The Agreed Framework, as a step towards full implementation of the Denuclearization Declaration, has succeeded in illiciting positive DPRK movement on key provisions of the Declaration. Specifically, North Korea's willingness to freeze immediately and eventually dismantle its graphite-moderated nuclear reactors and related facilities has halted activities which would, had they not been stopped, given the DPRK a nuclear weapons capability. Such a capability would have been a threat to peace and security on the Korean Peninsula as well as to Northeast Asia. The DPRK agreement to forego reprocessing under the Agreed Framework and to replace its existing nuclear reactors with proliferation-resistant LWRs represents a major step toward assuring the DPRK will not test, manufacture, produce, store, deploy or possess nuclear weapons. In addition, by agreeing to allow a continuous IAEA inspector presence on the ground and to come into full compliance with its IAEA safeguards obligations, including taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

MEMORANDUM OF JUSTIFICATION UNDER SECTION 614 OF THE FOREIGN ASSISTANCE ACT TO PROVIDE U.S. CONTRIBUTIONS TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

The Administration proposes that up to $22.0 million in FY 1996 International Organizations and Programs (IO&P) funds be used for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), an international consortium established to implement the Agreed Framework signed between the United States and the Democratic People's Republic of Korea (DPRK) on October 21, 1994. This funding level for U.S. contribu-

tions to KEDO was specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104–107). KEDO would be permitted to use the U.S. contribution to help cover the FY 1996 administrative and heavy fuel oil shipment expenses.

In order to make available the funds appropriated for this contribution, the President intends to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, to authorize the voluntary contribution to KEDO without regard to applicable statutory restrictions within the scope of this section, including any restrictions in sections 307, 620A, 620(f), or 530 of the Foreign Assistance Act or sections 507, 516, 523, or 527A of the Foreign Operations Appropriations Act.

The Agreed Framework addresses U.S. and international concerns about the DPRK's nuclear weapons program and, if fully implemented, will lead ultimately to the complete dismantlement of North Korea's current nuclear program. Under the U.S.—DPRK Agreed Framework, the U.S. represented that it would ''organize under its leadership an international consortium to finance and supply the light-water reactor (LWR) project to be provided to the DPRK.'' In order to meet this pledge, the U.S., South Korea (ROK) and Japan agreed on the creation of an international organization, KEDO, to implement the reactor project, the annual delivery of 500,000 metric tons of heavy fuel oil delivery to North Korea and other possible projects called for in the Agreed Framework (*e.g.*, the transfer of spent fuel out of the DPRK for ultimate disposition). The U.S., ROK and Japan have played and will continue to play leading roles in KEDO.

KEDO's purpose is to coordinate cooperation among interested parties in the international community and to facilitate the financing and execution of projects needed to implement the Agreed Framework. KEDO members have agreed to cooperate in taking the steps necessary to implement the Agreed Framework consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, the North-South Declaration on the Denuclearization of the Korean Peninsula, and the Statute of the International Atomic Energy Agency. Moreover, KEDO will obtain assurances that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by KEDO will be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy. The continued funding of KEDO is critical to the success of the specific objectives of the Agreed Framework, the general goals of international nuclear nonproliferation, and the aim of maintaining peace and security on the Korean Peninsula.

KEDO is located in New York and is directed by an Executive Board consisting of representatives of the original member countries—the U.S., Japan, and the ROK. Other members may participate in its activities by serving on advisory committees covering the organization's projects, attending the KEDO General Conference, participating in ad hoc technical meetings relating to KEDO projects and, in some cases, sending technical experts to serve in the KEDO secretariat. The day-to-day operations of KEDO are directed by Executive Director Stephen Bosworth, former U.S. Ambassador to the Philippines, assisted by two Deputy Executive Directors (one from Japan and one from the ROK). KEDO is seeking to contract with private firms for the bulk of the legal, technical, and financial expertise required to oversee the LWR project and other projects. It will have a secretariat consisting of approximately 30 people to carry out its functions.

The U.S. contribution to KEDO will help fund: 1) KEDO's FY 1996 costs for office space, office supplies, communications, consulting costs and legal services, and employee remuneration for a staff of thirty people, including the Executive Director, the two Deputy Directors, and support personnel; and 2) a portion of the estimated $50 million worth of heavy fuel oil due to be shipped in 1996. These funds are essential to KEDO's ability to meet the terms of the U.S.-DPRK Agreed Framework regarding the provision of heavy fuel oil. Should KEDO fail to meet these deliveries, the

DPRK might renege on its Agreed Framework obligations, including possibly breaking the freeze on its nuclear program. Hence, early transfer of these funds is essential to meeting our nonproliferation objectives in the DPRK.

[FR Doc. 96–12937
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

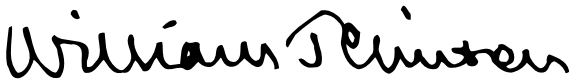
Presidential Determination No. 96–22 of April 18, 1996

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $22 million be made available from the United States Emergency Refugee and Migration Assistance Fund to meet the urgent needs of refugees and victims of conflict from the former Yugoslavia. These funds may be used as necessary to provide U.S. contributions in response to the appeals of international and nongovernmental organizations for funds to meet the urgent and unforeseen humanitarian needs of victims of conflict from the former Yugoslavia.

You are authorized and directed to inform the appropriate committees of the Congress of the determination and the obligation of funds under this authority and to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, April 18, 1996.

[FR Doc. 96–12938
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–23 of April 30, 1996

Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 564 of the Foreign Relations Authorization Act (''the Act''), Fiscal Years 1994 and 1995, Public Law 103–236, as amended, I hereby:

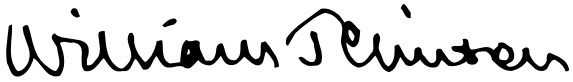
(1) determine and certify that the following countries do not currently maintain a policy or practice of sending letters to United States firms requesting compliance with, or soliciting information regarding compliance with, the Arab League secondary or tertiary boycott of Israel:

Jordan and Mauritania;

(2) determine that extension of suspension of the application of Section 564(a) of the Act to the following countries until May 1, 1997, will promote the objectives of Section 564:

Algeria, Bahrain, Bangladesh, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, April 30, 1996.

[FR Doc. 96–12939
Filed 5–22–96; 8:45 am]
Billing Code 4710–10–M

Presidential Documents

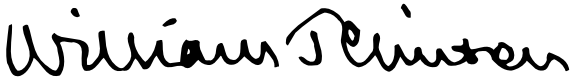
Presidential Determination No. 96–24 of May 9, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading ''Assistance for the New Independent States of the Former Soviet Union'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107) and section 301 of title 3, United States Code, I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the Federal Register.



THE WHITE HOUSE,
Washington, May 9, 1996.

[FR Doc. 96–12940
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

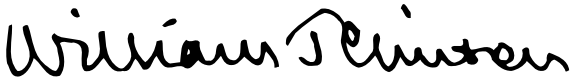
Memorandum of May 10, 1996

Delegation of Responsibilities Under Section 211(c) of Title II of Public Law 102–228

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the authority and duty vested in the President under section 211(c) of the Soviet Nuclear Threat Reduction Act of 1991 (title II of Public Law 102–228), as amended.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.



THE WHITE HOUSE,
Washington, May 10, 1996.

[FR Doc. 96–12941
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

federal register

Thursday
May 23, 1996

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28586; Notice No. 96–5]

RIN 2120–AE81

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to rescind the Mode S transponder requirement for all aircraft operations under part 135 and certain aircraft operations under part 121 of the Federal Aviation Regulations (14 CFR parts 121 and 135). For part 121 operators, this amendment would affect only those aircraft not required to have Traffic Alert and Collision Avoidance System II (TCAS II). The initial mandate for Mode S equipage was based on the assumption that Mode S would provide the sole method for air traffic control data link. The FAA's revised strategy of multiple air-ground data links managed through an Aeronautical Telecommunications net work removes this requirement. Further, operational experience with the Mode S ground sensors has shown that most surveillance enhancements can be achieved by the Mode S ground sensors with the present mixed population of airborne transponders. In addition, the use of Mode S transponders for aircraft, other than those required to have TCAS II, does not offer, nor is it expected to offer, any significant safety advantage in the current or future airspace environment. Therefore, requiring all aircraft at this time to have Mode S transponders when those aircraft are not required to have TCAS II is not essential for a safe and efficient National Airspace System. In the current airspace operational environment, the public interest does not require that all transponders newly installed in certain aircraft operated under part 121 and all aircraft operated under part 135 after January 1, 1992, be Mode S transponders.

DATES: Comments must be received on or before July 22, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmt@mail.hq.faa.gov. Comments must be marked Docket No. 28586. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel V. Meier Jr., Air Carrier Operations Branch (AFS–220), Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3749.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone 202–512–1661). Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Availability of NPRM's

Any person may obtain a copy of this NRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Distribution System, which describes the application procedure.

History

In 1982, the FAA announced a comprehensive plan to modernize and improve air traffic control and airway facilities. One part of the comprehensive plan included introducing the Mode S system. In an advance notice of proposed rulemaking, the FAA stated that improved surveillance reliability and accuracy would be a central objective of the Mode S system (48 FR 48364, October 18, 1983). Mode S transponders were considered an integral link in the system, furnishing accurate, reliable, and positive air traffic control information on aircraft identity, position, and altitude. The plan envisioned that all groundbased secondary radars would be replaced by Mode S stations, and that Mode S would provide the exclusive medium for an air/ground data link. At that time, the first 137 Mode S ground sensors were expected to be on-line by 1991. Therefore, the Mode S transponder requirement was promulgated with a final rule published February 3, 1987 (Amendment Nos. 121–190 and 135–22; 52 FR 3380). This final rule provided that any transponder newly installed in aircraft used for operations under parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR 121 and 135), before January 1, 1992, could be a Mode A transponder provided the transponder was manufactured prior to January 1, 1990; only Mode S transponders could be newly installed in these aircraft after January 1, 1992.

Mode A and Mode S Transponders

The two kinds of aircraft equipment addressed by this rulemaking are the Mode A and the Mode S transponders. They are the airborne portion of the secondary radar system, which is not a true radar system but rather an interrogate/respond system used to establish aircraft position and identity.

The Mode A transponder consists of a radio transceiver that responds to a coded train of pulses from ground sensors (known as Air Traffic Control Radar Beacon Interrogators (ATCBI)). The Mode A transponder response encodes one of 4,096 discrete codes (set by the pilot) in response to a Mode A interrogation from the ground sensor. The ground sensor receives the reply message, and processors extract the aircraft's position and identity for display on the controller's radar scope. An enhanced transponder is capable of responding to Mode C interrogations from the ground station by reporting the aircraft's altitude derived from a suitable encoding altimeter.

The Mode S transponder is an advanced version of the Mode A transponder which responds to conventional Mode A and Mode C interrogations, but it is also capable of responding to a Mode S interrogation with a unique code based on the aircraft's tail number. When used in conjunction with Mode S ground sensors, a system of nearly interference-free radar transmission and reception will exist. This system provides for improved target information to be display on the controller's radar screen and enables the various air traffic control computers (ATC) to detect conflict and control aircraft flow. In addition, the Mode S ground station recognizes a conventional Mode A transponder and reverts to conventional ATCBI operation for that aircraft.

The Mode S System

The Mode S system was designed to rectify limitations in the current radar system. The limitations include synchronous garble, loss of target and altitude integrity, and restrictions on traffic management caused by the limited number of discrete beacon codes. Of the two components in the Mode S system (i.e., the ground sensor and the transponder), the ground sensor provides most of the capability to ameliorate these limitations.

Synchronous garble occurs when the ground sensor interrogating two aircraft near one another cannot distinguish between their respective replies. In this situation, the data cannot be reconstructed; the ATC computer will either not display information or display erroneous information on the air traffic controller radar scope. When this condition can occur any time aircraft are in proximity, it is most likely to hamper air traffic services in areas of high density aircraft activity such as Classes B and C airspace areas. Improved processing capabilities found in the latest monopulse secondary radars are able to resolve many garble situations without Mode S transponder equipage by the aircraft. Operational experience with the currently deployed Mode S systems indicates that the garble resolution provided with the current transponder population is sufficient to provide assured separation using today's separation standards.

Target and altitude integrity expresses the ability of the radar system to distinguish between transmissions received from two different aircraft. The ATCBI secondary radar system transmits interrogation signals, and all transponder-equipped aircraft receiving the signal reply with a distinct code and, if so equipped, report the aircraft's altitude. As described earlier, the ability of the current system to distinguish between two signals is affected by the proximity of the aircraft to each other. Terrain, signal strength of the aircraft transponder equipment, and environmental factors can also derogate the ability of the ground sensor to determine the position and altitude of an aircraft.

Azimuth accuracy is improved with the Mode S system. To illustrate, when two aircraft are equal distances from a sensor in the existing system, they must be at least .23° of azimuth apart before both targets are displayed. With the Mode S system, those same aircraft need only be apart by .06° of azimuth to be displayed. A 1976 FAA-sponsored study postulated that a homogeneous Mode S environment (Mode S ground sensors and transponders) would increase integrity to more than 99 percent. Recent FAA tests and operational experience with the Mode S ground sensors have verified these figures.

If the number of aircraft operating in the National Airspace System continues to increase, the number of codes needed may eventually exceed the current limit of 4,096 discrete codes. Controllers assign these discrete codes, used to track aircraft position and altitude, to aircraft receiving air traffic services. The unique code assigned by the Mode S reduces the controller's workload and computer processing burden, allowing positive identification of an aircraft as it passes from one air traffic facility to another, and as data link messages are associated with surveillance targets. However, without a nationwide network of Mode S ground sensors in place and enhanced ATC computers with complementary software, these productivity benefits cannot be fully achieved.

Although the Mode S system improves accuracy in the surveillance of aircraft position and reduces interference in identify reports transmitted to air traffic controllers, which allows for clear surveillance of aircraft that are minimally separated, studies with the Precision Runway Monitor show that a multitude of procedural, pilot training, and other issues must be addressed before a relaxation in aircraft separation standards may be approved. Therefore the capacity benefits envisioned initially from Mode S are not primarily dependent on improved surveillance capability.

In addition to surveillance, the initial strategy for Mode S deployment includes a data-link capability. All secondary radar ground stations were to be converted to Mode S, which was to be the sole data link used for critical ATC messages. The FAA has adopted a new data link strategy with two principle thrusts: (1) a second FAA data link will be deployed as part of the next-generation air-ground VHF radios; and (2) private data link services will be considered if they meet FAA performance requirements. The message itself will be routed through an Aeronautical Telecommunications Network (ATN), which will automatically select the best air-ground media based on the nature of the message. This strategy provides a much more flexible and market-driven approach, which allows the FAA to work with the aviation community to use the best available evolving technology.

The new data link strategy means that nationwide Mode S ground station deployment is no longer required to establish the air-ground link. Further, mandatory Mode S transponder equipage by aircraft is not required to achieve widespread data link equipage in aircraft. The number of Mode S ground stations will now be determined by surveillance requirements and the marginal benefit of the increased air-ground data link capability.

Mode S capability is an integral part of the Traffic Alert and Collision Avoidance System II (TCAS II) required by § 121.356 14 CFR for certain aircraft operating under part 121. This regulation requires such aircraft having a passenger seating configuration of more than 30 seats to be equipped with an approved TCAS II and appropriate Mode S transponder by December 30, 1993. Used with TCAS II, Mode S provides air-to-air data exchange between TCAS-equipped aircraft making coordinated, complementary resolution advisories (recommended escape maneuvers) possible. A TCAS II system is rendered ineffective unless a Mode S transponder is installed with the TCAS II component.

Traffic Alert and Collision Avoidance System I (TCAS I) does not require data from Mode S transponders to function. This system is intended for use by aircraft with passenger seating configuration between 10 and 30 seats that are operated under parts 121 and 135. TCAS I provides proximity warning only to assist a pilot in the visual acquisition of intruder aircraft.

The FAA has determined that the requirement to install Mode S transponders after January 1, 1992, in aircraft not required to be equipped with TCAS II exceeds the requirements of the present and immediate future for a safe and efficient National Airspace System. Studies and analysis are being

conducted on advanced methods of aircraft separation to support the FAA's goal of ''free flight.'' Free flight is an operational vision that will allow aircraft to cooperatively plan and execute their optimal flight paths with minimal interference from ground-based controllers. The overall infrastructure improvements to the airspace system (including surveillance) required to achieve operational benefits are being defined, and public comment will be sought on the benefits, procedures, and any new avionics requirements before they are implemented. The FAA further invites comment on whether future equipage of Mode S transponders should be mandatory for certain areas of operation.

Except for aircraft equipped with TCAS II, the presence of Mode S transponder capability on part 135 aircraft would not enhance the safety of flight in today's airspace environment. If the demand for air traffic services continues to increase, A mode S transponder may be necessary for aircraft operating under parts 121 and 135 to increase efficiency in some areas of the national airspace system.

The Proposed Rule

The FAA proposes to rescind the Mode S transponder requirement for aircraft operating under part 135 of the FAR and those aircraft operating under part 121 that are not required to have TCAS II.

Paperwork Reduction Act

This proposed rulmaking would rescind an agency regulation and would not change any reporting requirements. Therefore, no review or approval under the Paperwork Reduction Act is required.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a ''significant regulatory action'' as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this NPRM are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation contained in the docket for this NPRM.)

Overview

Although this proposal applies to operators under parts 121 and 135, the benefits and costs sections of this evaluation will only focus on part 135 operators. Of the part 121 operators, only those not required to install TCAS II would be affected by this proposed rule. The FAA is not able, at this time, to determine the number of these operators because there is no information readily available. For this reason, only the potential impact on part 135 operators will be analyzed in this evaluation. The FAA solicits comments from the aviation community as to the number of part 121 operators not required to have TCAS II.

This proposed Mode S rescission would apply to all part 135 operators regardless of what kind of transponder (remote-mounted or panel-mounted) they would purchase. For this evaluation, however, the FAA will consider only those part 135 operators who would install remote-mounted transponders. When the FAA estimated the benefits of the Mode S rescission for part 91 operators, it counted all of the panel mounted Mode S transponders since those transponders are predominantly installed in part 91 aircraft. The FAA has since learned that some panel-mounted transponders are also installed in part 135 aircraft, especially those with less than 10 seats. Thus, the FAA has not estimated the number of panel-mounted transponders that are being operated in part 135 aircraft for this proposed rule. The FAA has not estimated this number for two reasons. First, the proportion of new panel-mounted transponders that are installed in part 135 aircraft is very difficult to estimate. Second, even if that proportion could be estimated, it could not be used to calculate the benefits for the proposed rule since they were already used to calculate the benefits of rescinding the Mode S requirement for part 91 operators. Consequently, the benefits of the proposed rule are underestimated.

Benefits

The benefits of this proposed rule are the cost-savings to aircraft operators who would be allowed to purchase Mode A transponders instead of Mode 2 transponders. The FAA estimates the cost-savings to be approximately $10 million over the next 10 years. The present value of these cost-savings would be $7 million (discounted, 7 percent, 1992 dollars).

To estimate the potential cost-savings of this proposed rule, the FAA estimated the number of remote-mounted transponders that would be installed in part 135 aircraft with 10 to 29 seats. The FAA estimates that 780 such aircraft are being operated in the United States. These aircraft make up the vast majority of aircraft that would be affected by the proposed rule to rescind the Mode S requirements.

The potential benefits would be the cost-savings that these operators would realize when they replace an existing remote-mounted Mode A transponder. The proposed rule would allow them to purchase and install another remote-mounted Mode A transponder instead of a new remote-mounted Mode S transponder. To estimate these potential benefits, the FAA surveyed several transponder manufacturers, fixed-based operators, and regional airlines in an effort to ascertain information on the frequency of Mode A transponder replacement. According to these industry sources, a part 135 operator would purchase a new transponder, on average, once every 10 years. Thus, over the next 10 years, on average, each part 135 operator would have purchased a new Mode S transponder.

Currently, an estimated 780 part 135 aircraft would potentially be affected by this proposed rule. Therefore, the population of part 135 aircraft that would be affected by this proposed rule annually would be approximately 78 (780/10). This translates into approximately 78 remote-mounted Mode S transponders that would be sold annually over the next 10 years.

The difference in price (including installation) between the average remote-mounted Mode A transponder and the average remote-mounted Mode S transponder is $12,800. This price represents the average cost-savings that a part 135 operator could realize as a result of the proposed rule to rescind Mode S requirements. Multiplying this cost-savings estimate of $12,800 by the number of transponders expected to be sold over the next 10 years would result in total potential benefits of $10 million (or $7 million discounted).

Costs

The proposed rule would impose an estimated cost of $910,000 (or $640,000 discounted) over the next 10 years. This cost impact would only affect Mode S manufacturers and would be the reduction in profit earned from Mode S sales. (Sales from Mode S exports would not be affected by the NPRM.) This proposed rule would not impose costs in the form of either reduced aviation safety or operational efficiency. The expected aviation safety and operational efficiency benefits of the Mode S rule have not been realized because the ground sensors were never installed and tested. This assessment is based on the following analysis of each of the potential cost components.

Aviation Safety and Operational Efficiency

Rescinding the Mode S requirement would not decrease operational efficiency in the air traffic control

system. In addition, the rescission would not decrease safety to aircraft operators and the flying public. While areas of high density air traffic may benefit from the improved target and altitude integrity of the Mode S system, the benefit will derive primarily from the ground sensor component; the limited benefit expected from the transponder component by itself would appear not to warrant the current Mode S transponder requirement for part 135 aircraft. Since those potential benefits have never been realized, neither aviation safety nor operational efficiency would decrease as a result of this proposed rule.

Mode S Transponder Manufacturers

Another potential cost impact of this proposed rule would be the additional costs incurred by manufacturers of Mode S transponders in lost profits. The manufacturers of remote-mounted Mode S transponders have made investments in designing and developing such products. The potential costs to those manufactures would be: (1) The initial investment to develop Mode S transponders for part 135 aircraft and (2) the potential lost profit on each remote-mounted Mode S transponder sold in the future. In terms of the initial development cost, there would be no loss due to this proposed rule. These manufacturers have incurred costs for developing remote-mounted Mode S transponders in response to the Mode S rule. Such costs, which are in excess of $4 million (undiscounted), are sunk and cannot be considered as part of the proposed rule. Once an investment is made and cannot be altered, it is called a sunk cost. For this reason, sunk costs are not considered when evaluating the costs of regulatory actions.

In terms of profits on Mode S transponders sold in the future, the proposed rule would impose a cost. The proposed Mode S rescission would decrease the demand for remote-mounted Mode S transponders by part 135 operators; hence, the cost to manufacturers would be lost profit. This lost profit would represent the difference in profit earned from sales of Mode A rather than Mode S transponders over the next 10 years. Due to the proprietary nature of such information, the FAA was unable to ascertain specific rates of profit that manufacturers earn on the sale of Mode S transponders. However, the FAA did receive information that indicates the profit earned on the sale of Mode A transponders is 10 percent. The FAA contends that this rate is also a fair representation for Mode S transponders as well, since they are similar products installed in the same type of aircraft and purchased by the same part 135 operators.

The amount of potential lost profit (LP) is the amount of revenue (R) that would be earned from the sale of Mode S transponders (instead of Mode A transponders) less the cost (C) of manufacturing Mode S transponders (instead of Mode A transponders). The revenue is equivalent to the cost-savings incurred by aircraft operators, which is $7 million (discounted) over the next 10 years. The cost of manufacturing Mode S tranponders can be estimated based on the relationship between the rate of profit, the revenue and the manufacturing cost. In general terms, this relationship can be represented as $R=C\times P$. In this instance, revenue is $7 million and profit is 1.10. To estimate the potential lost profit, the following calculation is made:

$R=C\times P=\$7M$

$C=\$7M/1.10=\$6.36M$

$LP=R-C=\$640,000$

As shown in the above calculation, the estimate of $640,000 represents the present value lost profit from selling Mode A instead of Mode S transponders over the next 10 years. The FAA recognizes that there is some uncertainty in the accuracy of the rate of profit on transponder sales for manufacturers. This uncertainty is due, in large part, to the fact that the rate of profit varies among manufacturers of remote-mounted Mode S transponders. As the result of this uncertainty, the FAA solicits comments from manufacturers of remote-mounted Mode S transponders as to the accuracy of the 10 percent rate of profit estimate.

Conclusion

The potential cost-relieving benefits of this proposed rule are estimated to be $7 million (discounted). The potential costs are estimated to be $640,000 (discounted). Based on this assessment, the FAA has determined that this proposed rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.''

According to the FAA's *Regulatory Flexibility Criteria and Guidance (2100.14A)*, a substantial number of small entities means a number that is not less than 11 and that is more than one third of the small entities subject to the proposed rule. The small entities that this proposed rule would potentially affect are aircraft flight instrument manufacturers that produce no more than 250 units annually. The FAA has identified the three manufacturers that produce remote mounted Mode S transponders. On average, these three manufacturers combined sell approximately 2,200 transponders annually. Each of the three manufacturers sell, on average, approximately 730 (2,200/3) Mode S transponders annually. Since 730 exceeds the annual size threshold of 250, none of the U.S. Mode S transponder manufacturers are considered to be small. Thus, this proposed rule would not impose a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. This proposed rule would not have a competitive trade disadvantage on foreign companies that sell foreign aviation products or services in the United States. This proposed rule also would not have a competitive trade disadvantage on domestic companies that sell U.S. products or services in foreign countries. This assessment is based on the belief that the number and type of transponders sold to foreign operators by U.S. manufacturers would not change as a result of this proposed rescission. The FAA was not able to identify any foreign manufacturers that sell transponders in the United States. Based on this information, the FAA contends that there would be no impact on them. However, the FAA solicits any comments on the international trade impact.

Federalism Implications

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

Conclusion

For the reasons discussed in this preamble and based on the findings in

the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that the proposed rescission of this regulation is not significant under Executive Order 12866. In addition,the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 111034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination, and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.345(c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment installed after January 1, 1992, must meet the performance and environmental requirements of the following TSO's:

(1) For aircraft not required to be equipped with an approved TCAS II traffic alert and collision avoidance system pursuant to § 121.356, any class of TSO–C74b or TSO–C74c, as appropriate, or the appropriate class of TSO–C112 (Mode S).

(2) For aircraft required to be equipped with an approved TCAS II traffic alert and collision avoidance system pursuant to § 121.356, the appropriate class of TSO–C112 (Mode S).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATIONS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

2. Section 135.143(c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment installed after January 1, 1992, must meet the performance and environmental requirements of any class of TSO–C74b or TSO–C74c, as appropriate, or the appropriate class of TSO–C112 (Mode S).

Issued in Washington, DC on May 15, 1996.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 96–13030 Filed 5–22–96; 8:45 am]

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federal register

Thursday
May 23, 1996

Part VI

Department of Justice

Federal Procurement; Proposed Reforms to Affirmative Action; Notice

DEPARTMENT OF JUSTICE

Proposed Reforms to Affirmative Action in Federal Procurement

AGENCY: Department of Justice.

ACTION: Public notice and invitation for reactions and views.

SUMMARY: The proposal set forth herein to reform affirmative action in federal procurement has been designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc. v. Peña,* 115 S. Ct. 2097 (1995). The proposed structure, which has been developed by the Justice Department, will form a model for amending the affirmative action provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

DATES: Comment Date: Reactions and views on the proposed model must be submitted in writing to the address below by July 22, 1996.

ADDRESSES: Interested parties should submit written comments to Mark Gross, Office of the Assistant Attorney General for Civil Rights, P.O. Box 65808, Washington, D.C. 20035–5808, telefax (202) 307–2839.

FOR FURTHER INFORMATION CONTACT: Mark Gross, Office of the Assistant Attorney General for Civil Rights, P.O. Box 65808, Washington, D.C. 20035–5808, telefax (202) 307–2839.

Introduction

In *Adarand,* the Supreme Court extended strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling government interest.

Through its initial authorization of the use of section 8(a) of the Small Business Act to expand opportunities for minority-owned firms and through reenactments of this and other programs designed to assist such businesses, Congress has repeatedly made the judgment that race-conscious federal procurement programs are needed to remedy the effects of discrimination that have raised artificial barriers to the formation, development and utilization of businesses owned by minorities and other socially disadvantaged individuals. In repeated legislative enactments, Congress has, among other measures, established goals and granted authority to promote the participation of Small Disadvantaged Businesses (SDBs) in procurement for the Department of Defense, NASA and the Coast Guard. It also enacted the Surface Transportation Assistance Act of 1982, the Surface Transportation and Uniform Relocation Assistance Act of 1987 and the Intermodal Surface Transportation Efficiency Act of 1991, each of which successively authorized a goal for participation by Disadvantaged Business Enterprises. Congress also included similar provisions in the Airport and Airway Improvement Act of 1982 with respect to procurement regarding airport development and concessions. Under Section 15(g) of the Small Business Act, 15 U.S.C. 644(g), Congress has established goals for SDB participation in agency procurement. Finally, in 1994, Congress enacted the Federal Acquisition Streamlining Act (FASA), which extended generally to federal agencies authority to conduct various race-conscious procurement activities. The purpose of this measure was to facilitate the achievement of goals for SDB participation established for agencies pursuant to Section 15(g) of the Small Business Act.

Based upon these congressional actions, the legislative history supporting them, and the evidence available to Congress, this congressional judgment is credible and constitutionally defensible. Indeed, the survey of currently available evidence conducted by the Justice Department since the *Adarand* decision, including the review of numerous specific studies of discrimination conducted by state and local governments throughout the nation, leads to the conclusion that, in the absence of affirmative remedial efforts, federal contracting would unquestionably reflect the continuing impact of discrimination that has persisted over an extended period. For purposes of these proposed reforms, therefore, the Justice Department takes as a constitutionally justified premise that affirmative action in federal procurement is necessary, and that the federal government has a compelling interest to act on that basis in the award of federal contracts.[1]

Subject to certain statutory limitations (that are discussed below), Congress has largely left to the executive agencies the determination of how to achieve the remedial goals that it has established. The Court in *Adarand* made clear that, even when there is a constitutionally sustainable compelling interest supporting the use of race in decisionmaking, any such programs must be narrowly tailored to meet that interest. We have focused, therefore, on ensuring that the means of serving the congressionally mandated interest in this area are narrowly tailored to meet that objective. This task must be taken very seriously. *Adarand* made clear that Congress has the authority to use race-conscious decisionmaking to remedy the effects of past and present discrimination but emphasized that such decisionmaking must be done carefully. This Administration is committed to ensuring that discriminatory barriers to the opportunity of minority-owned firms are eliminated and the maximum opportunities possible under the law are maintained. Our focus, therefore, has been on creating a structure for race-conscious procurement that will meet the congressionally determined objective in a manner that will survive constitutional scrutiny.

In giving content to the narrow tailoring prong of strict scrutiny, courts have identified six principal factors: (1) Whether the government considered race neutral alternatives and determined that they would prove insufficient before resorting to race-conscious action; (2) the scope of the program and whether it is flexible; (3) whether race is relied upon as the sole factor in eligibility, or whether it is used as one factor in the eligibility determination; (4) whether any numerical target is reasonably related to the number of qualified minorities in the applicable pool; (5) whether the duration of the program is limited and whether it is subject to periodic review; and (6) the extent of the burden imposed on nonbeneficiaries of the program. Not all of these factors are relevant in every circumstance and courts generally consider a strong showing with respect to most of the factors to be sufficient. This proposal, however, responds to all six factors.

The Department of Defense (DoD), which conducts a substantial majority of the federal government's procurement, was the focus of initial post-*Adarand* compliance actions by the federal government. In particular, DoD, acting pursuant to authority granted by 10 U.S.C. § 2323,[2] had developed through

[1] Set forth as an appendix to this notice is a preliminary survey of evidence establishing the compelling interest for affirmative action in federal procurement.

[2] Section 2323 establishes a five percent goal for DoD contracting with small disadvantaged businesses (''SDBs'') and authorizes DoD to ''enter into contracts using less than full and open competitive procedures * * * and partial set asides for [SDBs].'' Section 2323 states that the cost of using such measures may not exceed fair market price by more than ten percent. It authorizes the

regulation a practice known as the ''rule of two.'' Pursuant to the rule of two, whenever a contract officer could identify two or more SDBs that were qualified to bid on a project at a price within 10% of fair market price, the officer was required to set the contract aside for bidding exclusively by SDBs. Under section 2323, firms owned by individuals from designated racial minority groups are presumed to be SDBs.[3] Others may enter the program by establishing that they are socially and economically disadvantaged. After consultation with the Department of Justice, DoD suspended use of the rule of two in October 1995.

Congress in 1994 extended the affirmative action authority granted DoD by section 2323 to all agencies of the federal government through enactment of the Federal Acquisition Streamlining Act (FASA), Public Law No. 103–355, sec. 7102, 108 Stat. 3243, 15 U.S.C. 644 note.[4] Because of *Adarand* and the effort to review federal affirmative action programs in light of that decision, regulations to implement the affirmative action authority granted by FASA have been delayed. See 60 Fed. Reg. 448258, 48259 (Sept. 18, 1995). This proposal provides the basis for those regulations.

The proposed structure will necessarily affect a wide range of measures that promote minority participation in government contracting through race-conscious means. Taking DoD as an example, approximately one-sixth of contracting with minority-owned firms in 1994 resulted from use of the rule of two. The majority of dollars to minority firms was awarded by DoD through other means: direct competitive awards, the Small Business Administration's (SBA) section 8(a) program, subcontracting pursuant to section 8(d) of the Small Business Act, and a price credit applied pursuant to section 2323. With the exception of direct competitive awards (which do not take race into account), activities pursuant to all of these methods will be affected by the proposed reforms.[5]

The 8(a) program merits special mention at the outset. This program serves a purpose that is distinct from that served by general SDB programs. The 8(a) program is designed to assist the development of businesses owned by socially and economically disadvantaged individuals. To this end, the program is targeted toward concerns that are more disadvantaged economically than other SDBs (e.g. the standard for economic disadvantage for entry into 8(a) is an owner's net worth of $250,000 compared to $750,000 for SDB programs). Participants in the program are required to establish business development plans and are eligible for technical, financial, and practical assistance, and may compete in a sheltered market for a limited time before graduating from the program. Each of these aspects of the program is designed to assist the business in developing the technical and practical experience necessary to become viable without assistance. By contrast, the general SDB program is a procurement program, designed to assist the government in finding firms capable of providing needed services, while, at the same time, helping to address the traditional exclusion of minority-owned firms from contracting opportunities.

The operation of the 8(a) program will become subject to the overall limitations in the measures described below. In addition, the SBA is working to strengthen safeguards against fraud and to ensure that the 8(a) program serves its purpose of assisting the development of businesses owned by individuals who are socially and economically disadvantaged.

Because the proposed reforms are broad and cover a number of different subjects related to affirmative action in federal procurement, the Justice Department is seeking comments on each of the aspects of the proposal. Comments will be taken into account in the formulation of revised procurement regulations.

Overview of Structure

The SDB reform outlined herein involves five major topics: (1) Certification and eligibility; (2) benchmark limitations; (3) mechanisms for increasing minority opportunity; (4) the interaction of benchmark limitations and mechanisms; and (5) outreach and technical assistance. The proposed structure incorporates these elements into a system that furthers the President's commitment to ensuring equal opportunity in contracting, responds to the courts' narrow tailoring requirements, and is faithful to statutory authority.

I. Eligibility and Certification

At present, while a concern must have its eligibility certified by the SBA to participate in the 8(a) program, there is no similar certification requirement for participation in SDB programs. Under current practice, firms simply check a box to identify themselves as SDB's when bidding for federal contracts or 8(d) subcontracts. Reform of this certification process is needed to assure that programs meet constitutional and statutory objectives. While the basic elements of eligibility under these programs are statutorily determined, agencies have discretion to impose significant additional controls and to establish mechanisms to assure that the statutory criteria are in fact met.

The SBA will continue as the sole agency with authority to certify firms for the 8(a) program. The following discussion, therefore, concerns only certification of SDB's that are not participants in the 8(a) program.

Each bid that an SDB submits to an agency, or to a prime contractor seeking to fulfill 8(d) subcontracting obligations, will have to be accompanied by a form certifying that the concern qualifies as a small disadvantaged business under eligibility standards that will be published by the SBA. The standards and certification form will allow 8(a) participants to qualify automatically for SDB programs. Others will be required to establish their eligibility by submitting required statements and documentation.

When a concern has been certified by an agency as eligible for SDB programs, its name will be entered into a central on-line register to be maintained by SBA. That certification will be valid for a period of up to three years during which time registered firms will have only to complete a portion of the form confirming the continued validity of that certification to participate in SDB

Secretary of Defense to adjust the applicable percentage ''for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.''

[3] 10 U.S.C. 2323 incorporates by explicit reference the language of section 8(d) of the Small Business Act, which states that members of designated racial or ethnic groups are presumed to be socially and economically disadvantaged. Participants in the 8(a) program are also presumed to be SDBs.

[4] FASA states that in order to achieve goals for SDB participation in procurement negotiated with the Small Business Administration, an ''agency may enter into contracts using—(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and (B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.''

[5] This proposal addresses only affirmative action in the federal government's own direct procurement. It does not address affirmative action in procurement and contracting that is undertaken by states and localities pursuant to programs in which such entities receive funds from federal agencies (*e.g.*, the Disadvantaged Business Enterprise program that the Department of Transportation administers pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, section 1003(b), 105 Stat. 1919–1922, and the Airport and Airway Improvement Act of 1982, 49 U.S.C. 47101, *et seq.*).

programs at any agency. A full application will have to be submitted to an agency every three years to maintain eligibility.

A. Social and Economic Disadvantage

Members of designated minority groups seeking to participate in SDB and 8(d) programs will continue to fall within the statutorily mandated presumption of social and economic disadvantage.[6] This presumption is rebuttable as to both forms of disadvantage. The form will ask the applicant to identify the group identification triggering a presumption of social and economic disadvantage.[7] In addition, the form will enumerate the objective criteria constituting economic disadvantage according to SBA standards and advise the applicant that the presumption of such disadvantage is rebuttable and any challenge to the individual's SDB status will be resolved on the basis of these criteria. Challenges would be processed through existing SBA challenge mechanisms.

Individuals who do not fall within the statutory presumption will be required to establish social and economic disadvantage by answering a series of questions demonstrating such disadvantage. Questions regarding social disadvantage will be included in the standard certification form. Pursuant to current practice, individuals who do not fall within a presumption must prove their social disadvantage by clear and convincing evidence. That standard will be changed to permit proof by a preponderance of the evidence.

The SBA currently has criteria for evaluating social disadvantage. SBA will conduct training seminars designed to instruct personnel from other agencies on the procedures for making eligibility determinations. Individuals who do not fall within the statutory presumption will also be required to demonstrate that they are economically disadvantaged according to the criteria established by SBA.

Agencies will have discretion to decide which official within the agency will have authority to determine whether ''non-presumed'' individuals are socially and economically disadvantaged.[8] In most instances, the contracting officer should not have final authority to make the determination; the procedure must, however, facilitate quick decisions so that the procurement process will not be delayed and applicants will have a fair opportunity to compete. An agency may wish to assign this responsibility to its Office of Small and Disadvantaged Business Utilization. The SBA will answer inquiries regarding eligibility determinations and the procuring agency will retain the ability to refer applications to the SBA for final eligibility determinations through the protest procedures now in place. In the alternative, an agency may enter into an agreement with SBA to have SBA make all determinations, including the initial determination of eligibility.

B. Ownership and Control

In addition to submitting the form described above, every applicant will be required to submit with each bid a certification that the business is owned and controlled by the designated socially and economically disadvantaged individuals as those terms are defined by the SBA's standards for ownership and control at 13 C.F.R. 124.103 and 124.104.[9] Such a certification must come from an SBA approved organization, a list of which will be maintained by the SBA. In order to be approved by the SBA to certify ownership and control, (1) the entity must certify ownership and control according to the standards established by the SBA for the 8(a) program (13 C.F.R. 124.103 and 124.104); (2) the entity's certifications must have been accepted by a state or local government or a major private contractor; and (3) the entity must not have been disqualified by any government authority from making certifications within the past five years. Such entities may include private organizations, the SBA (*i.e.* through the 8(a) program), entities that provide certifications for participation in the Department of Transportation's disadvantaged business enterprise (''DBE'') program, or states or localities, so long as the certification addresses the standards for ownership and control promulgated by the SBA.

This procedure is intended to take advantage of the extensive network of certifying entities already in existence. At present, firms may have to obtain several different certifications as they pursue a mix of private and public contracts. While it is clear that a control mechanism is needed to protect against fraud, it makes little sense to create a new federal bureaucracy to perform work that is already being done and to erect another hurdle that an SDB must clear before qualifying for a federal contract. The limited resources of the federal government and of SDBs make creation of such a bureaucracy counterproductive.

To police the quality of certifications, SBA will conduct periodic audits of certifying organizations. Any entity may submit information to the SBA in an effort to persuade the agency to initiate such an audit.

As a means of ensuring that the identified socially and economically disadvantaged individuals retain ownership and control of a firm, a certification of ownership and control will be valid for a maximum of three years from the date it was issued. Certified firms will be required to recertify their eligibility by submitting a full application, including an updated certification of ownership and control, every three years.

C. Challenges

Where an SDB is the apparent successful offeror on a contract, the name of that firm and of the entity that certified its ownership and control will be a matter of public record. SBA regulations currently allow any concern that submitted an offer to protest the eligibility of an SDB that receives a contract through an SDB program. The procuring agency or SBA may also protest the eligibility of an SDB. Individuals or organizations that did not submit a bid for the contract in question may submit information to the procuring agency in an effort to convince the agency to initiate a protest.[10] The SBA's Division of Program Certification and Eligibility will process any protest that contains

[6] Both FASA and 10 U.S.C. 2323 incorporate by explicit reference the definition of social and economic disadvantage contained in section 8(d) of the Small Business Act. Pursuant to section 8(d), members of designated groups are presumed to be both socially and economically disadvantaged; those presumptions are rebuttable. By contrast, for the 8(a) program, members of identified groups are rebuttably presumed to be socially disadvantaged, but must establish that they are economically disadvantaged.

[7] Members of minority groups do not have to participate in the SDB program in order to bid on federal contracts.

[8] The form that such individuals are to complete will ask whether they previously have applied for SDB certification and been rejected or accepted. A rejected firm will not be permitted to re-apply for certification for one year after rejection, unless it can show changed circumstances.

[9] The standard certification form will accommodate one eligibility criterion peculiar to the DoD's SDB program under 10 U.S.C. 2323—that the majority of earnings must directly accrue to the socially and economically disadvantaged individuals that own and control the concern. The standard certification form will accommodate this criterion by including a DoD-specific section requiring the concern to attest that the majority of the firm's earnings do flow in this manner.

[10] The protests contemplated in the discussion here relate only to certification and eligibility. The discussion does not relate to protests to other features of the proposed reforms that might be raised through existing bid protest procedures or through actions under the Administrative Procedure Act.

specific factual allegations that the concern is not eligible for the program.

Grounds for an eligibility protest may include, but are not limited to, evidence that:

- The owners of the firm are not in fact socially or economically disadvantaged;
- The firm is not owned and controlled by the individuals who meet the definition of social and economic disadvantage;
- The disadvantaged firm has acted, or is acting, as a front company by failing to complete required percentages of the work contracted to the concern.[11]

Upon receiving a protest supported by specific factual information, the SBA will make an eligibility determination by examining documentation from the SDB including, for example, personal and business financial statements, business records, ownership certifications, and other information deemed necessary to permit a determination as to the eligibility of the firm. Current regulations require the SBA to make a determination concerning the eligibility of the firm within 15 days of the filing of the challenge or notify the contracting officer of any delay.

D. Enforcement

Finally, there must be a concerted effort to enforce the law against individuals who present fraudulent information to the government. The existence of a meaningful threat of prosecution for falsely claiming SDB status, or for fraudulently using an SDB as a front in order to obtain contracts, will do much to ensure that the program benefits those for whom it is designed. To this end, there will be an enhanced effort by SBA and the Department of Justice to identify and pursue individuals fraudulently misrepresenting information in order to obtain contracts through an SDB program. Any individual may forward specific factual information suggesting such a misrepresentation to the procuring agency contracting officer or the agency's inspector general. Similarly, the Inspector General of SBA will refer evidence of misrepresentation that emerges through the challenge procedure or otherwise to the Department of Justice. In its enforcement, the Department of Justice will ensure that it pursues to the extent permitted by law all of the parties responsible for fraudulent or sham transactions.

Penalties for misrepresentations in this area were increased by the Business Opportunity Development and Reform Act of 1988 and include:

(1) A fine of up to $500,000, imprisonment of up to 10 years, or both;

(2) Suspension and debarment from Federal contracting (48 C.F.R. pt. 9.4);

(3) Ineligibility to participate in any program or activity conducted under the authority of the Small Business Act or the Small Business Investment Act of 1958 for a period of up to three years; and

(4) Administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

Knowing and willful fraudulent statements or representations may subject an individual to criminal penalties, including imprisonment for up to five years, pursuant to 18 U.S.C. 1001. In addition, knowing misrepresentations to obtain payment from the federal government may violate the False Claims Act, 31 U.S.C. 3729, and subject the claimant to civil penalties and treble damages.

II. Benchmark Limits

Although Congress has made the judgment that affirmative race-conscious measures are needed in federal contracting, the use of race must be narrowly tailored. The federal government operates under a general statutory mandate to achieve the ''maximum practical opportunity'' for SDB participation and that overall mandate is translated into specific agency-by-agency goals. Some specific programs operate under statutorily prescribed goals.[12] To the extent that race-conscious measures (going beyond outreach and technical assistance) are utilized to obtain these objectives, limitations must be established to comply with narrow tailoring requirements.

To this end, the proposal relies on development of a set of specific guidelines to limit, where appropriate, the use of race-conscious measures in specific areas of federal procurement. The limits, or ''benchmarks'', will be set for each industry for the entire government. The Department of Commerce, in consultation with the General Services Administration (GSA) and SBA, will establish appropriate benchmark limitation figures for each industry and report them to the Office of Federal Procurement Policy (OFPP), which will publish and disseminate the final benchmark figures. Each industry benchmark limitation will represent the level of minority contracting that one would reasonably expect to find in a market absent discrimination or its effects. Benchmark limitations will provide the basis for comparison with actual minority participation in procurement in that industry (and, where appropriate, in a region).

In establishing the benchmark limitations, the first step is to define whether industries operate according to regional or national markets. In general, industries will be defined according to two-digit Standard Industrial Classification (SIC) codes. Based on the evidence, it appears that most federal contracting is conducted on a national basis. We also start from the view, reflected in a variety of federal policies, that federal contracting should encourage the development of national markets wherever feasible. Where data indicate, however, that an industry operates regionally, the benchmark limitations will be established by region.

After identifying the markets, the system will then measure, using primarily census data, the capacity of firms operating in each market that are owned by minorities. In estimating capacity, a number of factors will be examined. Most significant, of course, will be the number of minority SDBs available and qualified to perform government contracts.[13] In general, it appears appropriate to look at the industry in question and identify the smallest firm that has won a government contract in that industry in the last three years. Firms that are significantly smaller would be presumed to be unqualified to perform government contracts in that industry. While keeping in mind that capacity is not fixed, it will also be important to look at measures such as the number of employees and amount of revenues.

In addition to calculating the capacity of existing minority firms, the proposed system will examine evidence, if any, demonstrating that minority business formation and operation in a specific industry has been suppressed by

[11] The basis for such a challenge would be 48 C.F.R. 19.508, which requires completion of a minimum percentage of contract activities by the firm awarded a contract through a small business set aside or the 8(a) program. A clause must be inserted in such contracts that limits the amount of work that can be subcontracted. 48 C.F.R. 52.219–14. These requirements will be expanded to include contracts awarded through the reformed SDB program as well.

[12] See, *e.g.*, 10 U.S.C. 2323 (5% goal for DoD contracting with SDBs); Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, 105 Stat. 1914 (10% goal for highway construction projects carried out directly by the Department of Transportation).

[13] For these purposes, the calculation of the number of minority-owned firms will not include corporations owned by federally-recognized Native American tribes and Alaskan Native villages. Bidding credits for such corporations are not subject to the *Adarand* strict scrutiny standard.

discrimination. This evidence may include direct evidence of discrimination in the private and public sectors in such areas as obtaining credit, surety guarantees and licenses. It may also include evidence of discrimination in pricing and contract awards. In addition, the evidence may include the results of regression analysis techniques similar to those used in state studies of discrimination in procurement. That form of analysis holds constant a variety of variables that might affect business formation so that the effect of race can be isolated.

The combination of existing minority capacity and, where applicable, the estimated effect of race in suppressing minority business activity in the industry will form the benchmark limitation. Although there is no absolutely precise way to calculate the impact of discrimination in various markets, the benchmark limitations represent a reasonable effort to establish guidelines to limit the use of race-conscious measures and to meet the requirement that such measures be narrowly tailored to accomplish the compelling interest that Congress has identified in this area.

Benchmark limitations will be adjusted every five years, as new data regarding minority firms are made available by the Census Bureau. Generally, census regions will be used in defining the scope of regional markets.

III. Mechanisms for Increasing Minority Opportunity

Under the reformed structure, the federal government will generally have authority, subject to the limitations discussed in the next section, to use several race-conscious contracting mechanisms: SBA's 8(a) program; a bidding credit for SDB prime contractors; and an evaluation credit for non-minority prime contractors that use SDBs in subcontracting. In addition, at all times, agencies must engage in a variety of outreach and technical assistance activities designed to enhance contracting opportunities for SDBs (but that are not subject to strict scrutiny). Those efforts will be expanded as described more fully below.

The 8(a) program will continue to provide for sole source contracting and sheltered competition for 8(a) firms. However, the program will be monitored; and where the benchmark limitations described more fully below warrant adjustments to the SDB program, corresponding adjustments will be made to the 8(a) program to ensure that its operation is subject to those limitations.

A second available race-conscious measure will be a bidding credit in prime contracting for SDBs. Statutory authority for the use of such a credit exists for DoD in 10 U.S.C. 2323 and for the remainder of the government in FASA. Each statute permits use of such a credit so long as the final price does not exceed a fair market price by more than 10%.

The use of the term ''credit'' is not meant to restrict utilization by agencies of this mechanism to contracts where price is the primary factor in selecting the successful bidder. Where the successful bidder is selected based on other factors—such as the ability to produce a contract that provides the ''best value'' to the agency—agencies may build the value of increasing the participation of SDB contractors into the evaluation of offers. For some contracts, a numerical credit may be appropriate; in others, some form of nonnumerical assignment may make more sense to the agency. This proposal does not restrict such options. However, regardless how it operates, any bidding credit will be subject to the overall limitations on race-conscious mechanisms described herein.

Pursuant to 10 U.S.C. 2323 and FASA, agencies will also be permitted to use, as a third race-conscious mechanism, an evaluation credit with respect to the utilization by nonminority prime contractors of SDBs as subcontractors. Such goals would be set by the agency for each prime contract based on the availability of minority firms to perform the work. The award of evaluation credits for prime contractors that use SDBs as subcontractors will supplement the existing statutory SDB subcontracting requirements in Section 8(d) of the Small Business Act.[14] In order to certify their eligibility as SDBs, subcontractors will submit the same certification form to the prime contractor that is described in the certification section of this proposal.

Such an evaluation credit can take a number of different forms, depending on the circumstances of a solicitation.[15] For example, where it is practical for bidders to secure enforceable commitments from SDB subcontractors prior to the submission of bids, agencies should establish an SDB subcontracting goal for the contract, and award an evaluation credit to bidders who demonstrate that they have entered into such commitments as a means of achieving the goal. Where that is not practical, agencies can award an evaluation credit to a bidder that specifically identifies in a subcontracting plan those SDB subcontractors that it intends to use to achieve the agency's SDB subcontracting goal.[16] Agencies may also award an evaluation credit based on demonstrable evidence of a bidder's past performance in using SDB subcontractors. Agencies may also grant bonus awards to prime contractors to encourage the use of SDB subcontractors.[17] This proposal is not intended to limit agencies in developing or using additional mechanisms to increase SDB subcontracting, but any such mechanism will be subject to the limitations on race-conscious mechanisms described herein.

In applying these bidding and evaluation credits, race will simply be one factor that is considered in the decision to award a contract—in contrast to programs in which race is the sole factor.

IV. Interaction of Benchmark Limits and Mechanisms

In determining how benchmark limitations will be used to measure the appropriateness of various forms of race-conscious contracting, the objective has been to develop a system that can operate with a sufficient degree of clarity, consistency and simplicity over the range of federal agencies and contracting activities. Where the use of all available tools, including direct competition and race-neutral outreach and recruitment efforts, results in minority participation below the benchmark, race-based mechanisms will remain available. Their scope, however, will vary and be recalculated depending on the extent of the disparity between capacity and participation. Where participation exceeds the benchmark, and can be expected to continue to do

[14] For certain types of procurement, Section 8(d) requires agencies to negotiate an SDB subcontracting plan with the successful bidder for the prime contract. The statute provides that each such plan shall include percentage goals for the utilization of SDB subcontractors.

[15] As was the case with respect to the use of the term ''credit'' in connection with bids from SDBs as prime contractors, the use of that term here in connection with SDB subcontracting is not intended to restrict the utilization of this mechanism to the evaluation of prime contract bids for which price is the primary factor in selecting the successful bidder.

[16] In either case, a successful prime contractor should notify the contracting officer of any substitution of a non-SDB subcontractor for an SDB firm with which the prime contractor had entered into enforceable commitments or that had been specifically identified in the prime contractor's subcontracting plan.

[17] See e.g., Department of Transportation Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, 48 C.F.R. 52 219–10.

so with reduced race-conscious efforts, adjustments will be made.

At the close of each fiscal year, the Department of Commerce will review data collected by its GSA's Federal Procurement Data Center for the three preceding fiscal years to determine the percentage of contracting dollars that has been awarded to minority-owned SDBs in each two-digit SIC code. Commerce will analyze minority SDB participation for all transactions that exceed $25,000. This review will include minority-owned SDBs participating through direct contracting (including full and open competition), the 8(a) program, and SDB prime and subcontracting programs.[18] Data regarding minority participation will be reviewed annually, but will include the past three fiscal years of experience. Examining experience over three year stretches should produce a more accurate picture of minority participation, given short-term fluctuations and the fact that the process of bidding and awarding a contract may span more than a single fiscal year.

Commerce will analyze the data and, after consultation with SBA, report to OFPP regarding which mechanisms should be available in each industry and the size of the credits that can be applied. OFPP will publish and disseminate the mechanisms that can be used by the agencies in the upcoming year.

Pursuant to 15 U.S.C. 644(g), each agency now negotiates goals for SDB participation with SBA for each year. Commerce would inform SBA and agencies of the appropriate benchmark limits for the industries in which the agency contracts and of the mechanisms available.

Where Commerce determines that participation by SDB's in government contracting in an industry is below the relevant benchmark limitation, it may report to OFPP that agencies should be authorized to grant credit to SDB bidders and to prime contractors for SDB subcontracting. Commerce will set a percentage cap of up to ten percent on the amount the credit can allow the price of a contract to deviate from the fair market price. That percentage will represent the maximum credit that each agency may use in the evaluation of bids from SDBs and prime contractors who commit to subcontracting with SDBs. The size of the credit will depend, in part, on the extent of the disparity between the benchmark limitations and minority SDB participation in federal procurement and industry. It also will depend on an assessment of pricing practices within particular industries to indicate the effect of credits within that industry. Commerce's determinations would be published and disseminated by OFPP.

Where the bidding and evaluation credits have been used in an industry and the percentage of dollars awarded to SDBs in that industry exceeds the benchmark limit, Commerce, in consultation with SBA, must estimate the effect of curtailing the use of race-conscious contracting mechanisms and report to OFPP. If Commerce determines that the minority participation rate would fall substantially below the benchmark limit in the absence of race-conscious measures,[19] it need not require agencies to stop using such measures, but may, as described below, require agencies to adjust their use.

Agencies will report the number of contracts that were awarded using a bidding or evaluation credit as well as the amount of those credits. These figures will allow an estimate of the effect on SDB participation of adjusting or removing the credit. In the absence of that objective measure, Commerce will have to estimate and report to OFPP how much minority contracting resulted from the application of these race-conscious measures. One indication may be the success of minorities in winning contracts through direct competition in which race is not used in the decision to award a contract. It may also be useful to examine comparable experience in private industries operating without affirmative action programs.

Even when agencies are not required to terminate bidding and evaluation credits, they may be required to adjust their size in order to ensure that the credits do not lead to the award of a disproportionately large numbers of contracts to SDBs. Statutory authority for this adjustment exists in both FASA and section 2323. Because the size of credits will affect industries differently, it is impossible to prescribe a set of specific rules to govern adjustments. Responsibility will rest with Commerce to analyze the impact of credits by industry category and make adjustments where appropriate, which would then be published and disseminated by OFPP.

In addition, in some circumstances, an agency may use *less* than the authorized bidding or evaluation credit where necessary to ensure that use of the credits by a specific agency does not unfairly limit the opportunities of non-SDB contractors seeking contracts from that agency. While the size of the maximum credits will be determined on an industry-wide basis and apply across all agencies, it remains important to maintain flexibility at the agency level to ensure against any undue concentrations of SDB contracting and unnecessary use of race-conscious credits. Thus, for example, where an agency has been particularly successful in reaching out to SDB contractors, it may find its use of the full credits unnecessary to achieve its goals, in which event it could, subject to approval by Commerce, depart downward from the authorized credits. The exercise of this discretion will be particularly important to avoid geographic concentrations of SDB contracting that unduly limit opportunities for non-SDBs.

When Commerce concludes that the use of race-conscious measures is not justified in a particular industry (or region), the use of the bidding credit and the evaluation credit will cease. Suspending the use of race-conscious means will not affect the continued use of race-neutral contracting measures. The limits imposed by the benchmarks also would not affect the applicability of statutorily mandated goals, but would limit the extent to which race-conscious means could be used to achieve those goals. For example, DoD would retain its five percent overall statutory goal and would continue to exhort prime contractors to achieve goals for subcontracting with SDB's. Prime contractors, however, would no longer receive credit in evaluation of their bids for signing up or identifying SDB subcontractors. Likewise, outreach and technical assistance efforts would continue and minority bidders on prime contracts would continue to seek and win competitive awards; but there would no longer be any bidding credit for minority firms.

It should be emphasized that the benchmarks are not a limit on the level

[18] In order to measure accurately SDB subcontracting participation, it will be necessary to have information regarding SDB subcontracting participation by two-digit SIC code. At the same time, however, it is important to minimize the amount of new record-keeping and reporting that these reforms may require. Prime contractors such as commercial vendors that report SDB participation through company-wide annual subcontracting plans will continue to be able to use this reporting method, with some modification that serves to facilitate SIC code reporting. Under one approach, prime contractors could require all subcontractors to identify their primary SIC code and then track, as most primes do now, the amount of dollars that flows to each subcontractor.

[19] More than three ''standard deviations'' will generally be viewed as ''substantial'' for these purposes. Under applicable Supreme Court decisions, a disparity in the range of two or three standard deviations is strong evidence of a prima facie case of discrimination in the employment context. A standard deviation is a measure of the departure from the level of activity that one would expect in the absence of discrimination.

of minority contracting in any industry that may be achieved without the use of race-conscious measures. Conversely, there is, of course, no assurance that minority participation in particular industries will reach the benchmark limitations through the available race conscious measures. Minority participation will depend on the availability of qualified minority firms that successfully win contracts through open competition, subcontracting, the 8(a) program or through the application of price or evaluation credits. The system described herein is a good faith effort to remedy the effect of discrimination, but it is not a guarantee of any particular result.

The affirmative action structure described herein does not utilize the statutory authorization under FASA to allow federal agencies (or in the case of DoD its direct authorization under 10 U.S.C. 2323) to set contracts aside for bidding exclusively by SDBs. If federal agencies use race-conscious measures in the manner outlined above, together with concerted race-neutral efforts at outreach and technical assistance as described below, we believe the use of this additional statutory authority should be unnecessary. Following the initial two-year period of the reformed system's operation (and at regular intervals thereafter), however, Commerce, SBA and DoD will evaluate the operation of the system and determine whether this statutory power to authorize set-asides should be invoked. In making that determination, those agencies will take into account whether persistent and substantial underutilization of minority firms in particular industries or in government contracting as a whole is the result of the effects of past or present discriminatory barriers that are not being overcome by this system.

Such periodic reviews should also consider whether, based on experience, further limitation of the use of race-conscious measures is appropriate beyond those outlined herein. In that regard, it should be noted that the reformed structure is inherently and progressively self-limiting in the use of race-conscious measures. As barriers to minority contracting are removed and the use of race-neutral means of ensuring opportunity succeeds, operation of the reformed structure will automatically reduce, and eventually should eliminate, the use of race in decisionmaking. In addition, the statutory authority upon which the use of bidding and evaluation credits is based expires at the end of fiscal year 2000. Congress will determine whether that authority should be extended. See 10 U.S.C. 2323; FASA, § 7102.

Section 8(a) Program

Contracts obtained by minority firms through the 8(a) program will count toward the calculation whether minority participation has reached or exceeded the benchmark in any industry.[20] The Administrator of SBA will be under an obligation to monitor the use of the 8(a) program in relation to the benchmark limits. Thus, where Commerce advises that the use of race-conscious measures must be curtailed in a specific industry on the basis of the benchmarks, the Administrator would take appropriate action to limit the use of the program through one or more of the following techniques: (1) Limiting entry into the program in that industry; (2) accelerating graduation for firms that do not need the full period of sheltered competition to satisfy the goals of the program; and (3) limiting the number of 8(a) contracts awarded in particular industries or geographic areas.

These same techniques should be used by the Administrator in carrying out existing authority to ensure that 8(a) contracting is not concentrated unduly in certain regions. Even where a market is defined as national in scope, and 8(a) is being used within applicable national benchmark limits, efforts should be made to guard against excessive use of 8(a) contracting in a limited region.

As noted earlier, the 8(a) program is distinct from the general SDB program in that it is animated by its own distinct purpose—to assist socially and economically disadvantaged individuals to overcome barriers that have suppressed business formation and development. Consistent with its unique nature, the 8(a) program has features that already reflect some of the factors that make up the narrow tailoring requirement. Unlike other SDB's, individuals seeking admission to the 8(a) program must establish economic disadvantage without the benefit of any presumption. The Small Business Act defines economically disadvantaged individuals as ''those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.'' Furthermore, SBA employs objective criteria to measure whether an individual is economically disadvantaged. In this sense, the statute and regulations are targeted toward victims of discrimination; the SBA is proposing to clarify the regulations implementing the program to emphasize this fact. In addition, individuals are admitted to the 8(a) program for a limited period—nine years—and their performance is reviewed throughout. An individual may be required to leave the program prior to the nine year graduation period if the review reveals that the individual is no longer economically disadvantaged or the firm meets other graduation criteria determined by the SBA.

SBA has under consideration additional program changes designed to ensure that the 8(a) program focuses on its central mission of assisting businesses to develop and concentrates it resources on its intended beneficiaries. These changes would further ensure that the 8(a) program is narrowly tailored to serve the compelling interest for which it was enacted by Congress.

V. Outreach and Technical Assistance

At present, agencies undertake a variety of activities designed to make minority firms aware of contracting opportunities and to help them take advantage of those opportunities. As a general proposition, these activities are not subject to strict scrutiny. The structure outlined above for the use of race-conscious measures assumes that agencies will continue such outreach and technical assistance efforts at all times, so that race-conscious measures will be used only to the minimum extent necessary to achieve legitimate objectives. Our review indicates that, while there are a variety of good programs of this nature operated by various federal agencies, there is a lack of consistency and sustained energy and direction to these efforts.

SBA operates several assistance programs that are targeted toward minority firms, but are also available to qualifying nonminority firms. Notably, pursuant to section 7(j) of the Small Business Act, SBA provides financial assistance to public and private organizations to provide technical and management assistance to qualifying individuals. 13 CFR 124.403, 404. SBA also operates a program to provide assistance to socially and economically disadvantaged businesses in preparing loan applications and obtaining pre-qualification from SBA for loans. See 13 CFR 120. SBA also operates a surety bond program pursuant to which it provides up to a 90% guarantee for bonds required of small contractors.

[20] As with calculation of the benchmark limitations, see n. 13, *supra*, corporations owned by federally-recognized Native American tribes and Alaskan Native villages will not be included in this calculation.

The Department of Commerce, through the Minority Business Development Administration, sponsors several programs to provide information, training and research that are targeted toward minority-owned businesses. These programs include Minority Business Development Centers around the country to provide hands on assistance to minority businesses.

DoD has operated since 1990 the Mentor-Protege Pilot Program, which provides incentive for DoD prime contractors to furnish SDB's with technical assistance. See 10 U.S.C. 2301. Mentor firms provide a variety of assistance, including progress payments, advance subcontract payments, loans, providing technical and management assistance and awards of subcontracts on a noncompetitive basis to the protege. DoD reimburses the mentor firm for its expenses. The award of subcontracts under this program is subject to strict scrutiny, but other portions of the program are not.

The following are among the efforts that should be actively pursued:

1. A race-neutral version of the mentor-protege program (that does not guarantee the award of subcontracts on a non-competitive basis) should be encouraged at all agencies.

2. DoD has proposed—and other agencies should follow DoD's lead—eliminating the impact of surety costs from bids. Because SDB's generally incur higher bond costs, this race-neutral change would assist SDB's and address one of the most frequently cited barriers to minority success in contracting. In this regard, agencies should also examine the use of irrevocable letters of credit in lieu of surety bonds.

3. Where agencies use mailing lists, a minimum goal should be set for inclusion of SDB's on agency mailing lists of bidders.

4. The function of the Procurement Automated Source System (PASS), currently maintained by SBA, should be continued. The system provides contracting officers with a continuously updated list of SDB firms, classified by interest and region.

5. A uniform system for publishing agency procurement forecasts on SBA Online should be established. In addition, SBA should develop a systematic means for publishing upcoming subcontracting opportunities.

6. Agencies should target outreach and technical assistance efforts, including mentor-protege initiatives, toward industries in which SDB participation traditionally has been low. Agencies should continue to pursue strategies in which minority-owned firms are encouraged to become part of joint ventures or form strategic alliances with non-minority enterprises.

7. The SBA should enhance its technical assistance initiatives to enhance the ability of SDBs to use the tools of electronic commerce.

8. Pursuant to Executive Order 12876, which directs agencies to seek to enter into contracts with Historically Black Colleges and Universities, agencies should attempt to increase participation by such institutions in research and development contracts as means of assisting the development of business relationships between the institutions and SDB's.

9. Each agency should review its contracting practices and its solicitations to identify and eliminate any practices that disproportionately affect opportunities for SDBs and do not serve a valid and substantial procurement purpose.

The foregoing is merely a partial list of possible measures. What is required—both as a matter of policy and constitutional necessity—is a systematic and continuing government-wide focus on encouraging minority participation through outreach and technical assistance. It is proposed in contracting, therefore, that agencies should report annually to the President on their outreach and technical assistance practices. These reports should present the actual practices and experiences of federal agencies and include recommendations as to approaches that can and should be adopted more broadly. The maximum use of such race-neutral efforts will reduce to a minimum the use of race-conscious measures under the benchmark limits described above.

Conclusion

The structure outlined above has been crafted with regard for each of the six factors that courts have identified as relevant in determining whether race-based decisionmaking is narrowly tailored to meet an identified compelling interest. While courts have identified these six factors as relevant in determining whether a measure is narrowly tailored, they have not required that race-conscious enactments satisfy each element or satisfy any particular element to any specific degree. The structure proposed herein for SDB procurement, however, measures up favorably with respect to each of the six factors.

The proposal requires that agencies at all times use race-neutral alternatives to the maximum extent possible. An annual review mechanism is established to ensure maximum use of such race-neutral efforts. Only where those efforts are insufficient to overcome the effects of past and present discrimination can race-conscious efforts be invoked.

The system is flexible in that race will be relied on only when annual analysis of actual experience in procurement indicates that minority contracting falls below levels that would be anticipated absent discrimination. Moreover, the extent of any credit awarded will be adjusted annually to ensure that it is closely matched to the need for a race-based remedial effort in a particular industry.

Race will not be relied upon as the sole factor in SDB procurement decisions. The use of credits (instead of set-asides) ensures that all firms have an opportunity to compete and that in order to obtain federal contracts minority firms will have to demonstrate that they are qualified to perform the work.[21]

Application of the benchmark limits ensures that any reliance on race is closely tied to the best available analysis of the relative capacity of minority firms to perform the work in question—or what their capacity would be in the absence of discrimination.

The duration of the program is inherently limited. As minority firms are more successful in obtaining federal contracts, reliance on race-based mechanisms will decrease automatically. When the effects of discrimination have been eliminated, as demonstrated by minority success in obtaining procurement contracts, reliance on race will terminate automatically. The system as a whole will be reexamined by the executive branch at the end of two years and at regular intervals thereafter. In addition, the principal enactments that this proposal implements, FASA and the Department of Defense Authorization Act, expire at the end of the fiscal year 2000. Congress will have to examine the functioning of this system and make a determination whether to extend the authority to continue its operation.

Finally, the proposal avoids any undue burden on nonbeneficiaries of the program. As a practical matter, the overwhelming percentage of federal procurement money will continue to flow, as it does now, to nonminority businesses. Furthermore,

[21] The SBA's 8(a) program contains a variety of elements that help to target the program on firms in need of special assistance, including a requirement that applicants affirmatively demonstrate economic disadvantage. Furthermore, the program is not limited to minority-owned firms. These features of the program ensure that race is not the sole factor in determining entry into the program.

implementation of the benchmark limitations will ensure that race-based decisionmaking cannot result in concentrations of minority contracting in particular industries or regions and will thereby limit the impact on nonminorities.

The structure of affirmative action in contracting set forth herein will not be simple to implement and will undoubtedly be improved through further refinement. Agencies will have to make judgments and observe limitations in the use of race-conscious measures, and make concentrated race-neutral efforts that are not required under current practice. The Supreme Court, however, has changed the rules governing federal affirmative action. This model responds to principles developed by the Supreme Court and lower courts in applying strict scrutiny to race-based decisionmaking. The challenge for the federal government is to satisfy, within these newly-applicable constitutional limitations, the compelling interest in remedying the effects of discrimination that Congress has identified.

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Appendix—The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey

Under the Supreme Court's ruling last year in *Adarand Constructors, Inc.* v. *Peña,* 115 S. Ct. 2097 (1995), strict scrutiny applies to federal affirmative action programs that provide for the use of racial or ethnic criteria as factors in procurement decisions in order to benefit members of minority groups. Such programs satisfy strict scrutiny if they serve a ''compelling interest,'' and are ''narrowly tailored'' to the achievement of that interest. Strict scrutiny is the most exacting standard of constitutional review. It is the same standard that courts apply when reviewing laws that discriminate against minority groups. The Supreme Court in *Adarand* did not decide whether a compelling interest is served by the procurement program at issue in the case (or by any other federal affirmative action program), and remanded the case to the lower courts, which had not applied strict scrutiny.[1] Nevertheless, a strong majority of the Court—led by Justice O'Connor, who wrote the majority opinion—admonished that even under strict scrutiny, affirmative action by the federal government is constitutional in appropriate circumstances.[2] Without spelling out in precise terms what those circumstances are, the Court stated that the government has a compelling interest in remedying ''[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country.'' 115 S. Ct. at 2117.

At bottom, after *Adarand,* the compelling interest test centers on the nature and weight of evidence of discrimination that the government needs to marshal in order to justify race-conscious remedial action. It is clear that the mere fact that there has been generalized, historical societal discrimination in the country against minorities is an insufficient predicate for race-conscious remedial measures; the discrimination to be remedied must be identified more concretely. The federal government would have a compelling interest in taking remedial action in its procurement activities, however, if it can show with some degree of specificity just how ''the persistence of both the practice and the lingering effects of racial discrimination''—to use Justice O'Connor's phrase in *Adarand*—has diminished contracting opportunities for members of racial and ethnic minority groups.[3]

In coordinating the review of federal affirmative action programs that the President directed agencies to undertake in light of *Adarand,* the Justice Department has collected evidence that bears on that inquiry. The evidence is still being evaluated, and further information remains to be collected. As set forth below, that evidence indicates that racially discriminatory barriers hamper the ability of minority-owned businesses to compete with other firms on an equal footing in our nation's contracting markets. In short, there is today a compelling interest to take remedial action in federal procurement.[4]

The purpose of this memorandum is to summarize the evidence that has been assembled to date on the compelling interest question. Part I of the memorandum provides an overview of the long legislative record that underpins the acts of Congress that authorize affirmative action measures in procurement—a record that is entitled to substantial deference from the courts, given Congress' express constitutional power to identify and redress, on a nationwide basis, racial discrimination and its effects. The remaining sections of the memorandum survey information from various sources: (1) Congressional hearings and reports that bear on the problems that discrimination poses for minority opportunity in our society, but that are not strictly related to specific legislation authorizing affirmative action in government procurement; (2) recent studies from around the country that document the effects of racial discrimination on the procurement opportunities of minority-owned businesses at the state and local level; and (3) works by social scientists, economists, and other academic researchers on the manner in which the various forms of discrimination act together to restrict business

[1] *Adarand* involved a constitutional challenge to a Department of Transportation (''DOT'') program that compensates prime contractors if they hire subcontractors certified as small businesses controlled by ''socially and economically disadvantaged'' individuals. The legislation on which the DOT program is based, the Small Business Act, establishes a government-wide goal for participation of such concerns at ''not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.'' 15 U.S.C. § 644(g)(1). The Act further provides that members of designated racial and ethnic minority groups are presumed to be socially and economically disadvantaged. *Id.* § 637(a)(5)(6), § 637(d)(2),(3). In *Adarand,* the Supreme Court stated that the presumption constitutes race-conscious action, thereby triggering application of strict scrutiny. 115 S. Ct. at 2105.

[2] *Adarand,* 115 S. Ct. at 2117. The Court emphasized that point in order to ''dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Id.* Seven of the nine justices of the Court embraced the principle that it is possible for affirmative action by the federal government to meet strict scrutiny. This group included: (i) Justice O'Connor and two other justices in the majority, Chief Justice Rehnquist and Justice Kennedy; and (ii) the four dissenting justices (Stevens, Souter, Ginsburg, and Breyer). Only Justices Scalia and Thomas, both of whom concurred in the result in the case, advocated a position that approaches a near blanket constitutional ban on affirmative action.

[3] *Adarand* did not alter the principle that the government may take race-conscious remedial action in the absence of a formal judicial or administrative determination that there has been discrimination against individual members of minorities groups (or minorities as a class). The test is whether the government has a ''strong basis in evidence'' for the conclusion that such action is warranted. *City of Richmond* v. *J.A. Croson Co.,* 488 U.S. 469, 500 (1989). *Adarand* also did not alter the principle that the beneficiaries of race-conscious remedial measures need not be limited to those individuals who themselves demonstrate that they have suffered some identified discrimination. See *Local 28, Sheet Metal Workers' Int'l Ass'n* v. *EEOC,* 478 U.S. 421, 482 (1986); *Wygant* v. *Jackson Bd. of Educ.,* 476 U.S. 267, 277–78 (1986) (plurality opinion); *id.* at 287 (O'Connor, J., concurring).

[4] The term ''federal procurement'' refers to goods and services that the federal government purchases directly for its own use. This is to be distinguished from programs in which the federal government provides funds to state and local governments for use in their procurement activities. As part of those programs, Congress has authorized recipients of federal funds to take remedial action in procurement. Those programs are not the focus of this memorandum. However, much of the evidence discussed herein that supports the use of remedial measures in the federal government's own procurement also supports the use of congressionally-authorized remedial measures in state and local procurement.

opportunities for members of racial and ethnic minority groups.[5]

All told, the evidence that the Justice Department has collected to date is powerful and persuasive. It shows that the discriminatory barriers facing minority-owned businesses are not vague and amorphous manifestations of historical societal discrimination. Rather, they are real and concrete, and reflect ongoing patterns and practices of exclusion, as well as the tangible, lingering effects of prior discriminatory conduct.[6]

It is important to emphasize that, even though the government has a compelling interest in taking race-conscious remedial measures in its procurement, their use must be limited. Under the requirements of the ''narrow tailoring'' prong of strict scrutiny, the federal government may only employ such measures to the extent necessary to serve the compelling interest in remedying the impact of discrimination on minority contracting opportunity. The Justice Department's proposed reforms to affirmative action in federal procurement (to which this memorandum is attached) are intended to target race-conscious remedial measures to markets in which the evidence indicates that discrimination continues to impede the participation of minority firms in contracting. Thus, the proposal seeks to ensure that affirmative action in federal procurement operates in a flexible, fair, limited, and careful manner, and hence will satisfy the requirements of narrow tailoring.

I. Survey of the Legislative Record

In evaluating the evidentiary predicate for affirmative action in federal procurement, it is highly significant that the measures have been authorized by Congress, which has the unique and express constitutional power to pass laws to ensure the fulfillment of the guarantees of racial equality in the Thirteenth and Fourteenth Amendments.[7] These explicit constitutional commands vest Congress with the authority to remedy discrimination by private actors, as well as state and local governments.[8] Congress may also exercise its constitutionally grounded spending and commerce powers to ensure that discrimination in our nation is not inadvertently perpetuated through government procurement practices.[9] In exercising its remedial authority, Congress need not target only deliberate acts of discrimination. It may also strive to eliminate the effects of discrimination that continue to impair opportunity for minorities, even in the absence of ongoing, intentional acts of discrimination.[10] Furthermore, in combatting discrimination and its effects, Congress has the latitude to develop national remedies for national problems. Congress need not make findings of discrimination with the same degree of precision as do state or local governments. Nor is it obligated to make findings of discrimination in every industry or region that may be affected by a remedial measure.[11]

Congress has repeatedly examined the problems that racial discrimination poses for minority-owned businesses. A complete discussion of the entire record of Congress in this area is beyond the scope of this memorandum.[12] The

[5] It is well-established that the factual predicate for a particular affirmative action measure is not confined to the four corners of the legislative record of the measure. See, *e.g.*, *Concrete Works* v. *City and County of Denver*, 36 F.3d 1513, 1520–22 (10th Cir. 1994), cert. denied, 115 S. Ct. 1315 (1995); *Contractors Ass'n* v. *City of Philadelphia*, 6 F.3d 990, 1004 (3d Cir. 1993); *Coral Constr. Co.* v. *King County*, 941 F.2d 910, 920 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992).

[6] Congress has also adopted affirmative action measures in federal procurement, as well as in programs that fund the procurement activities of state and local governments, that are intended to assist women-owned businesses. At present, such measures are subject to intermediate scrutiny, not the *Adarand* strict scrutiny standard. Therefore, they have not been the focus of the post-*Adarand* review that the Justice Department is coordinating. However, some of the evidence collected by the Justice Department bears on the constitutional justification for affirmative action programs for women in government procurement. See, *e.g.*, Interagency Committee on Women's Business Enterprise, *Expanding Business Opportunities for Women* (1996); National Foundation for Women Business Owners and Dunn & Bradstreet Information Services, *Women-Owned Businesses: A Report on the Progress and Achievement of Women-Owned Enterprises—Breaking the Boundaries* (1995); *Problems Facing Minority and Women-Owned Small Businesses in Procuring U.S. Government Contracts: Hearing Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations*, 103d Cong., 2d Sess. (1994).

[7] See *Croson*, 488 U.S. at 488 (plurality opinion); *Fullilove* v. *Klutznick*, 448 U.S. 448, 483 (1980) (plurality opinion); *id.* at 500 (Powell, J., concurring); see also *Adarand*, 115 S. Ct. at 2114; *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547, 563 (1990); *id.* at 605–06 (O'Connor, J., dissenting); cf. *Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114, 1125 (1996) (reaffirming that broad grant of remedial power under Section 5 of the Fourteenth Amendment enables Congress to override state sovereign immunity).

[8] See *Croson*, 488 U.S. at 490 (plurality opinion); *Fullilove*, 448 U.S. at 476–78 (plurality opinion); *id.* at 500 (Powell, J., concurring); *Runyon* v. *McCrary*, 427 U.S. 160, 179 (1976); see also *Adarand*, 115 S. Ct. at 2126 (Stevens, J., dissenting); *Metro Broadcasting*, 497 U.S. at 605 (O'Connor, J., dissenting).

[9] See *Croson*, 488 U.S at 492 (plurality opinion) (''It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.''); see also *Metro Broadcasting*, 497 U.S. at 563–64; *Fullilove*, 448 U.S at 473–76 (plurality opinion).

[10] See *Adarand*, 115 S. Ct. at 2117 (Congress may adopt affirmative action to remedy ''both the practice and the lingering effects of discrimination''). Accord *id.* at 2133 (Souter, J., dissenting) (government may act to redress effects of discrimination ''that would otherwise persist and skew the operation of public systems even in the absence of current intent to practice any discrimination'').

[11] *Croson*, 488 U.S. at 490, 504; *Fullilove*, 448 U.S. at 502–03 (Powell, J., concurring).

[12] Congressional hearings on the subject from 1980 to the present include the following: *The Small Business Administration's 8(a) Minority Business Development Program: Hearing Before the Senate Comm. on Small Business*, 104th Cong., 1st Sess. (1995); *Discrimination in Surety Bonding: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *Department of Defense: Federal Programs to Promote Minority Business Development: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *SBA's Minority Business Development Program: Hearing Before the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *Problems Facing Minority and Women-Owned Small Businesses in Procuring U.S. Government Contracts: Hearing Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations*, 103d Cong., 1st Sess. (1993); *Fiscal Economic and Social Crises Confronting American Cities: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 102d Cong., 2d Sess. (1992); *Small Disadvantaged Business Issues: Hearing Before the Investigations Subcomm. of the House Comm. on Armed Services*, 102d Cong., 1st Sess. (1991); *Federal Minority Business Programs: Hearing Before the House Comm. on Small Business*, 102d Cong., 1st Sess. (1991); *To Amend the Civil Rights Act of 1964: Permitting Minority Set-Asides: Hearing Before the Senate Comm. on Governmental Affairs*, 101st Cong., 2d Sess. (1990); *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. of Small Business*, 101st Cong., 2d Sess. (1990); *Minority Business Set-Aside Programs: Hearing Before the House Comm. on the Judiciary*, 101st Cong., 1st Sess. (1990); *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101st Cong., 1st Sess. (1989); *Surety Bonds and Minority Contractors: Hearing Before the Subcomm. on Commerce, Consumer Protection and Competitiveness of the House Comm. on Energy and Commerce*, 100th Cong., 2d Sess. (1988); *Twenty Years after the Kerner Commission: The Need for a New Civil Rights Agenda: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 2d Sess. (1988); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Barriers to Full Minority Participation in Federally Funded Highway Projects: Hearings Before a Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. (1988); *The Small Business Competitiveness Demonstration Program Act of 1988: Hearings on S. 1559 Before the Senate Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Small Business Problems: Hearings Before the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987);

Continued

theme that emanates from this record is unequivocal: Congress has adopted race-conscious remedial measures in procurement directly in response to its findings that ''widespread discrimination, especially in access to financial credit, has been an impediment to the ability of minority-owned business to have an equal chance at developing in our economy.'' [13] Furthermore, Congress has recognized that expanding opportunities for minority-owned businesses in government procurement helps to bring into mainstream public contracting networks firms that otherwise would be excluded as a result of discriminatory barriers. In light of Congress' expansive remedial charter, it is a fundamental principle that courts must accord a significant degree of deference to those findings and the attendant judgment of the Congress that remedial measures in government procurement are warranted.[14]

The relevant congressional findings encompass a broad range of problems confronting minority-owned businesses. They include ''deficiencies in working capital, inability to meet bonding requirements, disabilities caused by an inadequate 'track record,' lack of awareness of bidding opportunities, unfamiliarity with bidding procedures, pre-selection before the formal advertising process, and the exercise of discretion by government procurement officers to disfavor minority businesses.'' [15]

For example, in a report that led to the legislation that created what has become known as the ''8(a)'' program at the Small Business Administration,[16] and that established goals for participation in procurement at each federal agency by firms owned and controlled by socially and economically disadvantaged individuals (SDB's),[17] a congressional committee found that the difficulties facing minority-owned businesses were ''not the result of random chance.'' Rather, the committee stated, ''past discriminatory systems have resulted in present economic inequities.'' [18] In connection with the same legislation, another committee concluded that a pattern of discrimination ''continues to deprive racial and ethnic minorities * * * of the opportunity to participate fully in the free enterprise system.'' [19] Eventually, when it adopted the 8(a) legislation, Congress found that minorities ''have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control,'' and that ''it is in the national interest to expeditiously ameliorate'' the effects of this discrimination through increased opportunities for minorities in government procurement.[20]

When revamping the 8(a) program in the late 1980s, Congress again found that ''discrimination and the present effects of past discrimination'' continued to hinder minority business development. Congress concluded that the program required bolstering so that it would better ''redress the effects of discrimination on entrepreneurial endeavors.'' [21]

In the same vein are congressional findings that underpin legislation that sets agency-specific goals for participation by disadvantaged businesses—including minority-owned firms—in procurement and grant programs administered by those agencies. For instance, in recommending the continued use of such goals as part of programs through which the Department of Transportation provides funds to state and local governments for use in highway and

Minority Business Development Act: Hearing Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business, 100th Cong., 1st Sess. (1987); *A Bill to Reform the Capital Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business,* 100th Cong., 1st Sess. (1987); *To Present and Examine the Result of a Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program: Hearings Before the Senate Comm. on Small Business,* 100th Cong., 1st Sess. (1987); *Minority Enterprise and General Small Business Problems: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Senate Comm. on Small Business,* 99th Cong., 2d Sess. (1986); *The State of Hispanic Small Business in America: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the House Comm. on Small Business,* 99th Cong., 1st Sess. (1985); *Federal Contracting Opportunities for Minority and Women-Owned Businesses: An Examination of the 8(d) Subcontracting Program: Hearings Before the Senate Comm. on Small Business,* 98th Cong., 1st Sess. (1983); *Minority Business and Its Contribution to the United States Economy: Hearing Before the Senate Comm. on Small Business,* 97th Cong., 2d Sess. (1982); *Small Business and the Federal Procurement System: Hearings Before the Subcomm. on General Oversight of the House Comm. on Small Business,* 97th Cong., 1st Sess. (1981); *Small and Minority Business in the Decade of the 1980's (Part 1): Hearings Before the House Comm. on Small Business,* 97th Cong., 1st Sess. (1981); *Small Business and the Federal Procurement System: Hearings Before the Subcomm. on General Oversight of the House Comm. on Small Business,* 97th Cong., 1st Sess. (1981); *To Amend the Small Business Act to Extend the Current SBA 8(a) Pilot Program: Hearings on H.R. 5612 Before the Senate Select Comm. on Small Business,* 96th Cong., 2d Sess. (1980).

[13] *Affirmative Action Review: Report to the President* 55 (1995).

[14] See *Croson,* 488 U.S. at 488–90 (plurality opinion); *Fullilove,* 448 U.S. at 472–73 (plurality opinion); *id.* at 508–10 (Powell, J., concurring); see also *Metro Broadcasting,* 497 U.S. at 563; *id.* at 605–07 (O'Connor, J., dissenting). This principle was not disturbed by the Supreme Court's ruling in *Adarand;* thus, it continues to have force, even under strict scrutiny. See *Adarand,* 115 S. Ct. at 2114; *id.* at 2126 (Stevens, J., dissenting); *id.* at 2133 (Souter, J., dissenting).

[15] *Fullilove,* 448 U.S. at 467 (plurality opinion).

[16] That program targets federal procurement opportunities for small firms owned and controlled by individuals who are socially and economically disadvantaged. See 15 U.S.C. § 637(a). Members of certain minority groups are presumed to be socially disadvantaged. 13 C.F.R. Pt. 124.

[17] 15 U.S.C. § 644(g).

[18] H.R. Rep. No. 468, 94th Cong., 1st Sess. 2 (1975).

[19] S. Rep. No. 1070, 95th Cong., 2d Sess. 14 (1978). See also H.R. Rep. No. 949, 95th Cong., 2d Sess. 8 (1978).

[20] Pub. L. No. 95–507, § 201, 92 Stat. 1757, 1760 (1978). See 124 Cong. Rec. 35,204 (1978) (statement of Sen. Weicker) (commenting on the introduction of the conference report on the 8(a) legislation and observing that the report recognizes the existence of a ''pattern of social and economic discrimination that continues to deprive racial and ethnic minorities of the opportunity to participate fully in the free enterprise system''). In the same year it passed the 8(a) legislation, Congress considered an additional bill that sought to target federal assistance to minority-owned firms. In introducing that measure, Senator Dole remarked that ''minority businessmen can compete equally when given equal opportunity. One of the most important steps this country can take to insure equal opportunity for its hispanic, black and other minority citizens is to involve them in the mainstream of our free enterprise system.'' 124 Cong. Rec. 7681 (1978).

[21] H.R. Rep. No. 460, 100th Cong., 1st Sess. 16, 18 (1987). See 133 Cong. Rec. 37,814 (1987) (statement of Sen. Bumpers) (discussing proposed revisions to 8(a) program and commenting that minorities ''continue to face discrimination in access to credit and markets''); *id.* at 33,320 (statement of Rep. Conte) (discussing proposed revisions to 8(a) program and commenting that effects of discrimination continued to be felt, and that 8(a) amendments were needed to ''create a workable mechanism to finally redress past discriminatory practices''). See generally S. Rep. No. 394, 100th Cong., 2d Sess. (1988); *The Small Business Competitiveness Demonstration Program Act of 1988: Hearings on S. 1559 Before the Senate Comm. on Small Business,* 100th Cong., 2d Sess. (1988); *Small Business Problems: Hearings Before the House Comm. on Small Business,* 100th Cong., 1st Sess. (1987); *Minority Business Development Act: Hearing Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business,* 100th Cong., 1st Sess. (1987); *A Bill to Reform the Capital Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business,* 100th Cong., 1st Sess. (1987); *To Present and Examine the Result of a Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program: Hearings Before the Senate Small Business Comm.,* 100th Cong., 1st Sess. (1987); *Minority Enterprise and General Small Business Problems: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Senate Comm. on Small Business,* 99th Cong., 2d Sess. (1986); *The State of Hispanic Small Business in America: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the House Comm. on Small Business,* 99th Cong., 1st Sess. (1985).

transit projects, a congressional committee observed that it had considered extensive testimony and evidence, and determined that this action was ''necessary to remedy the discrimination faced by socially and economically disadvantaged persons attempting to compete in the highway industry and mass transit construction industry.'' [22]

Congress has also established goals for SDB participation in procurement at the Defense Department, and authorized that agency to use specific forms of remedial measures to achieve the goals.[23] The Defense Department program too is predicated on findings that opportunities for minority-owned businesses had been impaired.[24] More fundamentally, in establishing the program, Congress recognized that fostering contracting opportunities for minority-owned businesses at the Defense Department is crucial, because that agency alone typically accounts for more than two-thirds of the federal government's procurement activities. Therefore, affirmative action efforts at the Defense Department enable minority-owned businesses to demonstrate their capabilities to contracting officers at that important procuring agency and to the vast number of nonminority firms that provide goods and services to the Pentagon. In turn, minority-owned businesses can begin to break into the contracting networks from which they typically have been excluded.[25]

Opportunities for minority-owned businesses to participate in Defense Department procurement increased following the introduction of the affirmative action program there in the late 1980s. However, the effects of discrimination were still felt in federal procurement generally. Based on information it obtained through a 1993 hearing, a congressional committee reported the following year that this ''lack of opportunity results primarily from discriminatory or economic conditions,'' and that ''improving access to government contracts and procurement offers a significant opportunity for business development in many industry sectors.'' [26] In the Federal Acquisition Streamlining Act of 1994, Congress saw fit to make available to all agencies the remedial tools that previously had been granted to the Defense Department, in order to ''improv[e] access to contracting opportunities for * * * minority-owned small businesses.'' [27]

Through its recurring assessments of the implications of discrimination against minority-businesses, Congress has concluded that, standing alone, legislation that simply proscribes racial discrimination is an inadequate remedy. Congress also has attempted to redress the problems facing minority businesses through race-neutral assistance to all small businesses.[28] Congress has determined, however, that those remedies, by themselves, are ''ineffectual in eradicating the effects of past discrimination,'' [29] and that race-conscious measures are a necessary supplement to race-neutral ones.[30] Finally, based on its understanding of what happens at the state and local level when use of affirmative action is severely curtailed or suspended outright, Congress has concluded that minority participation in government procurement tends to fall dramatically in the absence of at least some kind of remedial measures, the result of which is to perpetuate the discriminatory barriers that have kept minorities out of the mainstream of public contracting.[31]

[22] S. Rep. No. 4, 100th Cong., 1st Sess. 11 (1987). The DoT goals were initially established in the Surface Transportation Assistance Act of 1982, Pub. L. No. 97–424, § 105(f), 96 Stat. 2097 (1982). They were continued in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (''STURAA''), Pub. L. No. 100–17, § 106(c)(1), 101 Stat. 132, 145 (1987). Congress held further hearings on the subject after passage of STURAA. See *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101st Cong., 1st Sess. (1989); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Barriers to Full Minority Participation in Federally Funded Highway Construction Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. (1988). Congress subsequently reauthorized the goals in the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, § 1003(b), 105 Stat. 1914, 1919 (1991). See 137 Cong. Rec. S7571 (June 12, 1991) (statement of Sen. Simpson) (expressing support for continuation of disadvantaged business program at Transportation Department).

Congress has established comparable initiatives to encourage disadvantaged business participation in grant programs administered by the Environmental Protection Agency (EPA). For example, recipients of grants awarded by EPA under the Clean Air Act are required to set disadvantaged business goals. *See* 42 U.S.C. § 7601 note; see also 42 U.S.C. § 4370d (establishing an SDB goal for recipients of EPA funds used in support of certain environmental-related projects); H.R. Rep. No. 226, 102 Cong., 1st Sess. 48 (1991).

[23] 10 U.S.C. § 2323.

[24] See H.R. Rep. No. 332, 99th Cong., 1st Sess. 139–40 (1985) (if disadvantaged firms had been able to ''participate in the 'early' development of major Defense systems, they would have had an opportunity to gain the expertise required to bid on such contracts''); see also H.R. Rep. No. 450, 99th Cong., 1st Sess. 179 (1985); 131 Cong. Rec. 17,445–17,448 (1985); H.R. Rep. No. 1086, 98th Cong., 2d Sess. 100–01 (1984).

[25] See 131 Cong. Rec. 17,447 (1985) (statement of Rep. Conyers) (affirmative action needed to break down ''buddy-buddy contracting'' at the Defense Department, ''which has the largest procurement program in the Federal Government''); *id.* (statement of Rep. Schroeder) (an ''old boy's club'' in Defense Department contracting excludes many minorities from business opportunities); see also *Department of Defense: Federal Programs to Promote Minority Business Development: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. 49 (1993) (statement of Rep. Roybal-Allard) (''Old attitudes and old habits die hard * * *. Defense contracting has, traditionally, been a closed shop. Only a select few need apply. Since the passage of the minority contracting opportunity law, some progress has been made.''); H.R. Rep. No. 1086, 98th Cong., 2d Sess. 100–101 (1984) (low level of participation by disadvantaged firms in Defense Department contracting indicated a need to expand procurement opportunities at that agency for such firms).

[26] H.R. Rep. No. 870, 103d Cong., 2nd Sess. 5 (1994).

[27] 140 Cong. Rec. H9242 (Sept. 20, 1994) (statement of Rep. Dellums).

[28] Beginning with the Small Business Act of 1953, Congress has authorized numerous programs to ''aid, counsel, assist, and protect * * * the interests of small-business concerns'' and ''insure that a fair proportion of the total purchases and contracts for supplies and services for the government be placed with small-business enterprises.'' Pub. L. No. 163, § 202, 67 Stat. 232 (1953). After recognizing in the 1960s the specific problems facing minority owned businesses, Congress attempted to address them through race-neutral measures. For example, in 1971, Congress amended the Small Business Investment Act to create a surety bond guarantee program to assist small businesses that have trouble obtaining traditional bonding. In 1972, Congress created a new class of small business investment companies to provide debt and equity capital to small businesses owned by socially and economically disadvantaged individuals. And over the years, Congress has continuously reviewed and strengthened programs to assist all small businesses through the Small Business Act. See *e.g.* Pub. L. No. 93–386, 88 Stat. 742 (1974); Pub. L. No. 94–305, 90 Stat. 663 (1976); Pub. L. No. 95–89, 91 Stat. 553 (1977).

[29] *Croson*, 488 U.S. at 550 (Marshall, J., dissenting). Accord *Fullilove*, 448 U.S. at 467 (plurality opinion); *id.* at 511 (Powell, J., concurring); *see also City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 48 (1990) (statement of Ray Marshall); H.R. Rep. No. 468, 94th Cong., 1st Sess. 32 (1975).

[30] It bears emphasizing that race-neutral programs for small businesses are important and necessary components of an overall congressional strategy to enhance opportunity for small businesses owned by minorities. For example, Congress has authorized contracting set asides for small businesses generally—minority and nonminority alike—as well as a host of bonding, lending, and technical assistance programs that are open to all small businesses. See 15 U.S.C. § 631 *et seq.*

[31] *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond* v. *J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the House Comm. on Government Operations*, 101st Cong., 2d Sess. 57, 62–90 (1990); *City of Richmond* v. *J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 39–44 (1990) (statement of Andrew Brimmer).

The foregoing is just a sampling from the legislative record of congressionally-authorized affirmative action in government procurement. The remainder of the memorandum surveys evidence from other sources regarding the impact of discrimination on the ability of minority-owned businesses to compete equally in contracting markets. This evidence confirms Congress' determination that race-conscious remedial action is needed to correct that problem.

II. Discriminatory Barriers to Minority Contracting Opportunities

Developing a business that can successfully compete for government contracts depends on many factors. To begin with, technical or professional experience, which is typically attained through employment and trade union opportunities, is an important prerequisite to establishing any business. Second, obtaining financing is necessary to the formation of most businesses. The inability to secure the twin building blocks of experience and financing may prevent a business from ever getting off the ground. Some individuals overcome these initial obstacles and are able to form businesses. However, they subsequently may be shut out from important contracting and supplier networks, which can hinder their ability to compete effectively for contract opportunities. And further barriers may be encountered when a business tries to secure bonding and purchase supplies for projects—critical requirements for many major government contracts.

While almost all new or small businesses find it difficult to overcome these barriers and become successful, these problems are substantially greater for minority-owned businesses. Empirical studies and reports issued by congressional committees, executive branch commissions, academic researchers, and state and local governments document the widespread and systematic impact of discrimination on the ability of minorities to carry out each of the steps that are required for participation in government contracting. This evidence of discrimination can be grouped into two categories:

(i) evidence showing that discrimination works to preclude minorities from obtaining the experience and capital needed to form and develop a business, which encompasses discrimination by trade unions and employers and discrimination by lenders;

(ii) evidence showing that discriminatory barriers deprive existing minority firms of full and fair contracting opportunities, which encompasses discrimination by private sector customers and prime contractors, discrimination by business networks, and discrimination by suppliers and bonding providers.

The following provides an overview of both categories of evidence.

A. Effects of Discrimination on the Formation and Development of Minority Businesses

A primary objective of affirmative action in procurement is to encourage and support the formation and development of minority-owned firms as a remedy to the ''racism and other barriers to the free enterprise system that have placed a heavier burden on the development and maturity of minority businesses.'' [32] That these efforts are necessary is evident from the recent findings by the U.S. Commission on Minority Business Development, appointed by President Bush. The Commission amassed a large amount of evidence demonstrating the marginal position that minority-owned businesses hold in our society:

- Minorities make up more than 20 percent of the population; yet, minority-owned businesses are only 9 percent of all U.S. businesses and receive less than 4 percent of all business receipts.[33]
- Minority firms have, on average, gross receipts that are only 34% of that of nonminority firms.[34]
- The average payroll for minority firms with employees is less than half that of nonminority firms with employees.[35]

President Bush's Commission undertook an extensive analysis of the barriers that face minority-owned business formation and development. It concluded that ''minorities are not underrepresented in business because of choice or chance. Discrimination and benign neglect is the reason why our economy has been denied access to this vital resource.'' [36] Further evidence of the effect of discrimination on minority business development is revealed in recent studies showing that minorities are significantly less likely than whites to form their own business—even after controlling for income level, wealth, education level, work experience, age and marital status.[37] These findings strongly indicate that minorities ''face barriers to business entry that nonminorities do not face.'' [38]

Since the inception of federal affirmative action initiatives in procurement, policy makers have recognized that there are two principal barriers to the formation and development of minority-owned businesses: limited technical experience and limited financial resources. President Nixon's Advisory Council on Minority Business Enterprise identified these barriers in 1973 when it reported that ''a characteristic lack of financial and managerial resources has impaired any willingness to undertake enterprise and its inherent risk.'' [39] Two decades later, a congressional committee found that minorities continue to have ''fewer opportunities to develop business skills and attitudes, to obtain necessary resources, and to gain experience, which is necessary for the success of small businesses in a competitive environment.'' [40] Discrimination in two sectors of the national economy accounts, at least in part, for the diminished opportunity: discrimination by trade unions and employers, which has prevented minorities from garnering crucial technical skills; and discrimination by lenders, which has prevented minorities from garnering needed capital.

1. Discrimination by Trade Unions and Employers

President Nixon's Advisory Council on Minority Business Enterprise determined that ''the lack of opportunity to participate in managerial technical training has severely restricted the supply of [minority] entrepreneurs,

[32] *Small and Minority Business in the Decade of the 1980's (Part 1): Hearings Before the House Comm. on Small Business,* 97th Cong., 1st Sess. 4 (1981). See also H.R. Rep. No. 870, 103d Cong., 2d Sess. 5 (1994).

[33] United States Commission on Minority Business Development, *Final Report* 2–6 (1992). These statistics are based on 1987 census data, the most recent full data available regarding the status of minority-owned businesses. Preliminary reports from 1992 census data reveal that the status of minority firms has not significantly improved. For instance, African Americans are 12 percent of the population but, in 1992, owned only 3.6% of all businesses (up from 3.1% in 1987) and received just 1 percent of all U.S. business receipts (which is the same level as in 1987).

[34] *Id.* at 3.

[35] *Id.* at 4.

[36] *Id.* at 60.

[37] See Division of Minority and Women's Business Development, *Opportunity Denied: A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State,* Appendix D, 53–75 (1992) (finding that minorities in New York were 20% less likely to enter self-employment than similarly situated whites); Timothy Bates, *Self-employment Entry Across Industry Groups,* Journal of Business Venturing, Vol. 10, at 143–56 (1995).

[38] Timothy Bates, *Self-employment Entry Across Industry Groups,* Journal of Business Venturing, Vol. 10, 149 (1995).

[39] Samuel Doctors & Anne Huff, *Minority Enterprise and the President's Council* 4–6 (1973) (quoted in Tuchfarber *et al., City of Cincinnati: Croson Study* 150 (1992)).

[40] H.R. Rep. No. 870, 103d Cong., 2d Sess. 5 (1994).

managers and technicians.'' [41] A history of discrimination by unions and employers helps to explain this unfortunate phenomenon.

Prior to the civil rights accomplishments of the 1960s, labor unions and employers were virtually free to practice overt racial discrimination. Minorities were segregated into menial, low wage positions, leaving no minority managers or white collar workers in most sectors of our economy. Trade unions, which controlled training and job placement in many skilled trades, commonly barred minorities from membership. As a result, ''whole industries and categories of employment were, in effect, all-white, all-male.'' [42] These practices left minorities unable to gain the experience needed to operate all but the smallest businesses, primarily consisting of small ''mom and pop'' stores with no employees, minimal revenue, located in segregated neighborhoods, and serving an exclusively minority clientele.[43]

Discrimination by unions has been recognized as a major factor in preventing minorities from obtaining employment opportunities in the skilled trades. Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination) was passed, in part, in response to Congress's desire to halt ''the persistent problems of racial and religious discrimination or segregation * * * by labor unions and professional, business, and trade associations.'' [44] Even after Title VII went on the books, however, unions precluded minorities from membership through a host of discriminatory policies, including the use of ''tests and admissions criteria which [have] no relation to on-the-job skills and which [have] a differential impact'' on minorities; [45] discriminating in the application of admission criteria; [46] and imposing admission conditions, such as requiring that new members have a family relationship with an existing member, that locked minorities out of membership opportunities.[47] As a result, unions remained virtually all-white for some time after the enactment of Title VII:

- In 1965, the President's Commission on Equal Opportunity found that out of 3,969 persons selected for skilled trade union apprenticeships in 30 southern cities, only 26 were black.[48]
- In 1967, blacks made up less than 1 percent of the nation's mechanical union members (i.e. sheet metal workers, boilermakers, plumbers, electricians, ironworkers and elevator constructors).[49]
- In 1969, only 1.6 percent of Philadelphia construction union members were minorities.[50]

Even when minorities were admitted to unions, discriminatory hiring practices and seniority systems often were used to foreclose job opportunities to them.[51] These actions were the subject of numerous civil rights suits, leading the Supreme Court to declare in 1979 that ''judicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice.'' [52] Well into the 1980s, courts, committees of Congress, and administrative agencies continued to identify the ''inability of many minority workers to obtain jobs'' through unions because of ''slavish adherence to traditional preference practices [and] also from overt discrimination.'' [53]

The discriminatory conduct that was the subject of the Supreme Court's decision in *Local 28, Sheet Metal Workers v. EEOC,*[54] is illustrative of the pattern of racial exclusion by trade unions and its consequences for minorities. The union local operated an apprenticeship training program designed to teach sheet metal skills. Apprentices enrolled in the program received class-room training, as well as on-the-job work experience. As the Supreme Court described it, successful completion of the program was the principal means of attaining union membership. But by excluding minorities from the apprenticeship program through ''pervasive and egregious discrimination,'' [55] the local effectively excluded minorities from the

[41] Samuel Doctors & Anne Huff, *Minority Enterprise and the President's Council* 4–6 (1973) (quoted in Tuchfarber *et al., City of Cincinnati: Croson Study* 150 (1992)).

[42] *Affirmative Action Review: Report to the President* 7 (1995).

[43] See, *e.g.*, Joseph Pierce, *Negro Business and Business Education* (1947); Andrew Brimmer, *The Economic Potential of Black Capitalism,* Public Policy Vol. 19, No. 2, at 289–308 (1971); Kent Gilbreath, *Red Capitalism: An Analysis of the Navajo Economy* (1973).

[44] S. Rep. No. 872, 88th Cong., 1st Sess. 1 (1964). See, *e.g.*, Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia,* Pt. VII, 11–17 (1990) (in 1963, minorities were prohibited from joining Atlanta unions representing plumbers, electricians, steel workers and bricklayers); TEM Associates, *Minority/Women Business Study: Revised Final Report, Phase I, Volume I 3–13* (''In 1963, not one of the 1,000 persons in apprenticeship training in Dade County was Black, and the Miami Sheet Metal Workers local, like most other trade unions, was all white.'').

[45] *United States v. Iron Workers Local 86,* 443 F.2d 544, 548 (9th Cir.) cert. denied, 404 U.S. 984 (1971). See also *Hameed v. International Ass'n of Bridge, Structural & Ornamental Iron Workers,* 637 F.2d 506 (8th Cir. 1980) (selection criteria, including aptitude test, and the requirement of a high school diploma as a condition of eligibility were discriminatory).

[46] *United States v. Iron Workers Local 86,* 443 F.2d 544, 548 (9th Cir.) (differential application and admissions requirements between whites and blacks; spurious reasons given for rejections of blacks), cert. denied, 404 U.S. 984 (1971); *Sims v. Sheet Metal Workers Int'l Ass'n,* 489 F.2d 1023 (6th Cir. 1973) (union waived requirements for white applicants).

[47] *United States v. United Bhd. of Carpenters and Joiners of America,* 457 F.2d 210, 215 (7th Cir.) cert. denied, 409 U.S. 851 (1972) (family relation requirement excluded minorities from Carpenters trade); *United States v. International Ass'n of Bridge, Structural and Ornamental Iron Workers,* 438 F.2d 679, 683 (7th Cir.) (requiring family relationships between new and existing members ''effectively precluded non-white membership'') cert. denied, 404 U.S. 830 (1971); *Asbestos Workers, Local 53 v. Vogler,* 407 F.2d 1047 (5th Cir. 1969) (rule restricting membership to sons or close relatives of current members perpetuated the effect of past exclusion of minorities).

[48] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 24 (1989) (citing findings of President's Commission on Equal Opportunity).

[49] Steve Askin & Edmund Newton, *Blood, Sweat and Steel,* Black Enterprise, Vol. 14, at 42 (1984).

[50] Department of Labor Memorandum from Arthur Fletcher to All Agency Heads (1969) (cited in *Affirmative Action Review: Report to the President* 11 (1995)) (introducing the ''Philadelphia Plan'' requiring the use of affirmative action goals and timetables in construction, Secretary Fletcher noted that ''equal employment opportunity in these trades in the Philadelphia area is still far from a reality. * * * We find, therefore, that special measures are required to provide equal opportunity in these seven trades'').

[51] See *Pennsylvania* v. *Operating Eng'rs, Local 542,* 469 F. Supp. 329, 339 (E.D. Pa. 1978) (unions held liable for racial discrimination in employee referral procedures and practices); Waldinger & Bailey, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction,* Politics and Society, Vol. 19, No. 3, at 299 (1991) (''Despite rules and formal procedures, informal relationships still dominate the union sector's employment processes.''); Edmund Newton, *Steel, The Union Fiefdom,* Black Enterprise, Vol. 14, at 46 (1984) (discrimination in operation of hiring halls ''operated as impenetrable barriers'' to minority job seekers). See generally Barbara Lindeman Schlei & Paul Grossman, *Employment Discrimination Law* 619–28 (1983).

[52] *United Steelworkers of Am. v. Weber,* 443 U.S. 193, 198 n. 1 (1979).

[53] *Taylor v. United States Dept. of Labor,* 552 F. Supp. 728, 734 (E.D. Pa. 1982). See *Minority Business Participation in Department of Transportation Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations,* 99th Cong., 1st Sess. 201 (1985) (testimony of James Haughton) (minority contractors continue to ''suffer[] heavily because they have been victims to that discrimination as practiced by the unions''); Division of Minority and Women's Business Development, *Opportunity Denied!: A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State* 41 (1992) (''At least seven reports were issued by federal, state and city commissions and agencies between 1963 and 1982 documenting the pattern of racial exclusion from New York's skilled trade unions by constitution and by-law provisions, member sponsorships rules, subjective interview tests and other techniques, as well as the complicity of construction contractors and the acquiescence of government agencies in those practices.'').

[54] 478 U.S. 421 (1986)

[55] *Id.* at 476.

union for decades. Such exclusion continued notwithstanding the passage of Title VII and a series of administrative and judicial findings in the 60s and 70s that the local had engaged in blatant discrimination in shutting minorities out of the program. Indeed, even into the 80s, the local persisted in violating court orders to open up the program to minorities.[56]

More recently, a Yale University economist prepared a report documenting the history of discrimination by New Haven unions that ''confirms the nationwide pattern of discrimination.'' [57] Prior to the passage of the Civil Rights Act of 1964, New Haven's unions prohibited minority membership, and minority workers were almost completely segregated into jobs that whites would not take because they required working under conditions of extreme heat or discomfort.[58] After passage of the Civil Rights Act, minorities were prevented from entering unions by a rule requiring that at least three current members sponsor the application of any new member.[59] Although the policy was race-neutral on its face, ''it was almost impossible to find three members who would nominate a minority [and] stand up for him in a closed meeting when other members would undoubtedly attack the candidate and his sponsors.'' [60] This and other discriminatory policies prevented all but five African Americans from joining the 1,216 white members of the highest paid skilled trade unions in 1967, and throughout the mid-70s, unions and apprenticeship programs remained virtually all-white.[61] The report concluded that the history of ''blocked access to the skilled trades is the most important explanation of the low numbers of minority and women construction contractors today.'' [62]

There is no doubt that trade unions have put much of the discriminatory past behind them, and they now provide an important source of opportunity for minorities. Some barriers to full opportunity remain, however.[63]

A parallel history of discriminatory treatment by employers has prevented minorities from rising into the private sector management positions that are most likely to lead to self-employment. In 1972, Congress found that only 3.5 percent of minorities held managerial positions compared to 11.4 percent of white employees.[64] Congress attributed this underrepresentation to continued discriminatory conduct by ''employers, labor organizations, employment agencies and joint labor-management committees.'' [65] Evidence derived from caselaw and academic studies shows a variety of discriminatory employment practices, including promoting white employees over more qualified minority employees; [66] relying on word-of-mouth recruiting practices that exclude minorities from vacancy announcements; [67] and creating promotion systems that lock minorities into inferior positions.[68]

A study published earlier this year surveyed a broad range of current labor market evidence and concluded that employment discrimination is ''not a thing of the past.'' [69] Rather, race still matters when it comes to determining access to the best employment opportunities.[70] Progress has been made, of course. Yet, ''more than three decades after the passage of the Civil Rights Act, segregation by race and sex continues to be the rule rather than the exception in the American workplace, and discrimination still reduces the pay and prospects of workers who are not white or male.'' [71] The exclusionary conduct frequently is not deliberate, and the people on top—who are mostly white and male—often believe that they are behaving fairly. But old habits die hard: reliance on outmoded stereotypes and group reputations, and the persistence of ''invisible biases'' work to perpetuate a system that creates disadvantages in employment for minorities today.[72]

The results of recent ''testing'' studies—in which equally matched

[56] *Id.* at 433–34.

[57] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 25–26 (1989).

[58] *Id.* at 26–27.

[59] *Id.* at 28.

[60] *Id.* at 28.

[61] *Id.* at 33; New Haven Board of Aldermen, Minority and Women Business Participation in the New Haven Construction Industry: Committee Report 7 (1990).

[62] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 34 (1989). Comparable conclusions about the impact of trade union discrimination have been reached in studies from other jurisdictions around the country. See, *e.g.*, D.J. Miller & Associates, *et al., The Disparity Study for Memphis Shelby County Intergovernmental Consortium* 11–46 (Oct. 1994) (''In Memphis, trade unions have historically discriminated against African Americans.''); *Report of the Blue Ribbon Panel to the Honorable Richard M. Daley, Mayor of the City of Chicago* 43 (March 1990) (''The Task Force specifically notes the exclusion of minorities and women from the building trades.''); National Economic Research Associates, *et al., Availability and Utilization of Minority and Women-Owned Business Enterprises at the Massachusetts Water Resources Authority* 72 (Nov. 1990) (''A number of M/WBE owners complain that problems caused by unions are exacerbated by state bidding requirements that make it difficult or impossible for non-union firms to bid.''); Coopers & Lybrand, *et al., State of Maryland Minority Business Utilization Study* 9 (Feb. 1990) (discussing discriminatory union practices).

[63] See BPA Economics, *et al., MBE/WBE Disparity Study of the City of San Jose* I–34 (1990) (''When trying to join unions, minorities may face testing and experience requirements that are waived in the case of relatives of current union members.''); Waldinger & Bailey, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction*, Politics and Society, Vol. 19, No. 3, at 296–97 (1991) (''In 1987, blacks averaged less than 80 percent of parity for all skilled trades with even lower levels of representation in the most highly paid crafts like electricians and plumbers.''); *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond* v. *J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the Comm. on Government Operations*, 101st Cong., 2d Sess. 111–15 (1990).

[64] H.R. Rep. No. 238, 92d Cong., 2d Sess. 3 (1972).

[65] *Id.* at 7.

[66] See, *e.g., Winbush* v. *Iowa*, 69 FEP Cases 1348 (8th Cir. 1995) (evidence was ''overwhelming'' that employer had engaged in disparate treatment with respect to promotion of black employees); (*United States* v. *N.L. Industries, Inc.*, 479 F.2d 354 (8th Cir. 1973) (99 percent white management structure caused, in part, by promoting lesser qualified white employees over more qualified minorities).

[67] See, *e.g., EEOC* v. *Detroit Edison Co.*, 515 F.2d 301, 313 (6th Cir. 1975), vacated and remanded on other grounds, 431 U.S. 951 (1977) (finding discrimination in ''the practice of relying on referrals by a predominantly white work force''); *Long* v. *Sapp*, 502 F.2d 34, 41 (5th Cir. 1974) (word-of-mouth recruitment serves to perpetuate all-white work force); *Thomas* v. *Washington County Sch. Bd.*, 915 F.2d 922 (4th Cir. 1990). See also Univ. of Mass., *Barriers to the Employment and Work-Place Advancement of Latinos: A Report to the Glass Ceiling Commission* 52 (Aug. 1994) (word-of-mouth recruiting methods that rely on social networks are a significant ''exclusionary barrier'' to employment opportunities for minorities); Roosevelt Thomas, *et al., The Impact of Recruitment, Selection, Promotion and Compensation Policies and Practices on the Glass Ceiling*, submitted to U.S. Department of Labor Glass Ceiling Commission, 14 (April 1994) (noting that ''recruitment practices primarily consist[ing] of word-of-mouth and employee referral networking * * * promote the filling of vacancies almost exclusively from within. If the environment is already homogenous, which many are, it maintains this same 'home-grown' environment''); Gertrude Ezorsky, *Racism and Justice: The Case for Affirmative Action* 14–18 (1991); U.S. Commission on Civil Rights, *Affirmative Action in the 1980s: Dismantling the Process of Discrimination* 8 (1981); Barbara Lindeman Schlei & Paul Grossman, *Employment Discrimination Law* 571 (1983).

[68] See, *e.g., Paxton* v. *Union National Bank*, 688 F.2d 552, 565–566 (8th Cir. 1982), cert. denied, 460 U.S. 1083 (1983); *Sears* v. *Bennett*, 645 F.2d 1365 (10th Cir. 1981) (system requiring that porters, all of whom were black, forfeit seniority when changing jobs designed to prevent promotion of black employees), cert. denied, 456 U.S. 964 (1982); *Terrell* v. *U.S. Pipe and Foundry Co.*, 644 F.2d 1112 (5th Cir. 1981) (seniority system created for clearly discriminatory purposes), vacated on other grounds, 456 U.S. 955 (1982). See also Ella Bell & Stella Nkomo, *Barriers to Workplace Advancement Experienced by African Americans* 3 (1994) (''African Americans * * * are functionally segregated into jobs less likely to be on the path to the top levels of management.'').

[69] Barbara Bergmann, *In Defense of Affirmative Action* 32–33 (1996).

[70] *Id.* at 33.

[71] *Id.* at 62.

[72] *Id.* at 63–82.

minorities and nonminorities seek the same job—are but one source of evidence supporting this conclusion. These studies show, for instance, that white males receive 50 percent more job offers than minorities with the same characteristics applying for the same jobs.[73] As Justice Ginsburg described them, the testing studies make it abundantly clear that ''[j]ob applicants with identical resumes, qualifications, and interview styles still experience different receptions, depending on their race.'' [74]

Even when minorities are hired today, a ''glass ceiling'' tends to keep them in lower-level positions. This problem was recognized by Senator Dole who, in 1991, introduced the Glass Ceiling Act on the basis of evidence ''confirming * * * the existence of invisible, artificial barriers blocking women and minorities from advancing up the corporate ladder to management and executive level positions.'' [75] That Act created the Federal Glass Ceiling Commission, which subsequently completed an extensive study of the opportunities available to minorities and women in private sector employment, and concluded that ''at the highest levels of business, there is indeed a barrier only rarely penetrated by women or persons of color.'' [76] Evidence released by the Commission paints the following picture:

- 97 percent of the senior level managers in the nation's largest companies are white.[77]
- Black and Hispanic men are half as likely as white men to be managers or professionals.[78]
- In the private sector, most minority managers and professionals are tracked into areas of the company—personnel, communications, affirmative action, public relations—that are not likely to lead to advancement to the highest levels of experience.[79]
- Because private sector opportunities are so limited, most minority professionals and managers work in the public sector.[80]

In light of the evidence that it considered, the Commission concluded that, ''in the private sector, equally qualified and similarly situated citizens are being denied equal access to advancement on the basis of gender, race, or ethnicity.'' [81]

In sum, there are two central means to gaining the experience needed to operate a business. One is to be taught by a parent, passing on a family-owned business. But the long history of discrimination and exclusion by unions and employers means there are very few minority parents with any such business to pass on.[82] The second avenue is to learn the skills needed through private employment. But the effects of employment and trade union discrimination have posed a constant barrier to that entryway into the business world.[83]

2. Discrimination by Lenders

Without financing, a business cannot start or develop. There are two main methods for a new business to raise capital. One is to solicit investments from the public by selling stock in the company (public credit); the other is to solicit investments from banks or other lenders (private credit). Congress has heard evidence that ''since small businesses have very limited or no access to public credit markets, it is critically important that these entities, especially minority-owned small businesses, have adequate access to bank credit on reasonable terms and conditions.'' [84] The rub is that small businesses owned by minorities find it much more difficult than small firms owned by nonminorities to secure capital. Indeed, this is often cited as the single largest factor suppressing the formation and development of minority-owned businesses.[85] The sad fact is that, through countless hearings, Congress has learned that lending discrimination plays a major role in this regard.[86]

Over and over again, studies show that minority applicants for business loans are more likely to be rejected and,

[73] Cross *et al., Employer Hiring Practices: Differential Treatment of Hispanic and Anglo Job Seekers* (1990); Turner *et al., Opportunities Denied, Opportunities Diminished: Discrimination in Hiring* (1991).

[74] *Adarand*, 115 S. Ct. at 2135 (Ginsburg, J., dissenting).

[75] Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital* iii (1995) (citing 1991 statement by Senator Dole regarding 1991 Department of Labor *Report on the Glass Ceiling Initiative*).

[76] *Id.* at iii.

[77] *Id.* at 9.

[78] *Id.* at iv–vi.

[79] *Id.* at 15–16.

[80] *Id.* at 13.

[81] *Id.* at 10–11.

[82] See, *e.g., The Meaning and Significance for Minority Business of the Supreme Court Decision in the City of Richmond* v. *J.A. Croson: Hearing Before the Legislative and National Security Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. 111 (1990) (statement of Manuel Rodriguez) (''[f]ew [minorities] today have families from whom they can inherit'' a business); H.R. Rep. No. 870, 103d Cong., 2d Sess. 15 n. 36 (1994) (''[T]he construction industry is * * * family dominated. Many firms are in their second or third generation operating structures.''); New Haven Board of Aldermen, *Minority and Women Business Participation in the New Haven Construction Industry* 10 (1990) (''The exclusion of minorities from construction trades employment before the 1970s resulted in an absence of a parent or family member owning a construction business.'').

[83] National Economic Research Associates, *et al., The Utilization of Minority and Women-Owned Businesses Enterprises by Alameda County* 176–77 (June 1992) (''A number of witnesses identified historic union discrimination as a major limitation to the formation and success of minority firms.''); Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 34 (1989) (discrimination has prevented minorities from ''gain[ing] experience and skills'' necessary to operate a business and therefore has ''kept the pool of potential minority * * * contractors artificially small'').

[84] *Availability of Credit to Minority and Women-Owned Small Businesses: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking*, 103d Cong., 2d Sess. 6 (1994) (statement of Andrew Hove). One reason that minorities starting small businesses are especially reliant on bank lending is because they traditionally lack personal wealth or access to other sources of private credit, such as loans from family or friends. See generally Oliver & Shapiro, *Black Wealth/White Wealth* (1993).

[85] See *The Wall Street Journal Reports: Black Entrepreneurship* R.1 (1992) (Roper Organization poll of 472 minority business owners listed access to capital as the primary barrier to their business development); United States Commission on Minority Business Development, *Final Report* 12 (1992) (''One of the most formidable stumbling blocks to the formation and development of minority businesses is the lack of access to capital.'').

[86] See *Availability of Credit to Minority and Women Owned Small Businesses: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking*, 103d Cong., 2d Sess. 27 (1994) (statement of Wayne Smith) (while perhaps more subtle than discrimination in mortgage lending, discrimination in business lending exists); H.R. Rep. No. 870, 103d Cong., 2d Sess. 7 (1994) (''There is a widespread reluctance on the part of the commercial banking * * * and capital markets to take the same risks with a [minority] entrepreneur that they would readily do with a white one.''); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearing Before the Subcomm. on Procurement, Innovation, and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. 26 (1988) (statement of Joann Payne) (''[b]ecause of the ethnic and sex discrimination practiced by lending institutions, it was very difficult for minorities and women to secure bank loans.''); *The Disadvantaged Business Enterprise Program of the Federal-Aid Highway Act: Hearing Before the Subcomm. on Transportation of the Senate Comm. on Environment and Public Works*, 99th Cong. 1st Sess. 363 (1985) (statement of James Laducer) (North Dakota banks ''refuse to lend monies to minority businesses from nearby Indian communities''); see also *Fiscal Economic and Social Crises Confronting American Cities: Hearings Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 102d Cong., 2d Sess. (1992); *Federal Minority Business Programs: Hearing Before the House Comm. on Small Business*, 102d Cong., 1st Sess. (1991); *City of Richmond* v. *J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. (1990); *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101 Cong., 1st Sess. (1989).

when accepted, receive smaller loan amounts than nonminority applicants with *identical* collateral and borrowing credentials:

• The typical white-owned business receives three times as many loan dollars as the typical black-owned business with the same amount of equity capital.[87] In construction, white-owned firms receive *fifty* times as many loan dollars as black-owned firms with identical equity.[88]

• Minorities are approximately 20 percent less likely to receive venture capital financing than white firm owners with the same borrowing credentials.[89]

• All other factors being equal, a black business owner is approximately 15 percent less likely to receive a business loan than a white owner.[90]

• The average loan to a black-owned construction firm is $49,000 less than the average loan to an equally matched nonminority construction firm.[91]

A comparable pattern of disparity appears in the most recent study on lending to minority firms, which was released earlier this year. That study surveyed 407 business owners in the Denver area. It found that African Americans were 3 times more likely to be rejected for business loans than whites.[92] The denial rate for Hispanic owners was 1.5 times as high as white owners.[93] Disparities in the denial rate remained significant even after controlling for other factors that may affect the lending rate, such as the size and net worth of the business.[94] The study concluded that ''despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample (Black, Hispanic and Anglo) were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial.'' [95]

In sum, capital is a key to operating a business. Without financing, no business can form. Once formed, restricted access to capital impedes investments necessary for business development. Minority-owned firms face troubles on both fronts. And in large part, those troubles stem from lending discrimination.[96] As President Bush's Commission on Minority Business Development explained, the result is a self-fulfilling prophecy:

Our nation's history has created a ''cycle of negativity'' that reinforces prejudice through its very practice; restraints on capital availability lead to failures, in turn, reinforce a prejudicial perception of minority firms as inherently high-risks, thereby reducing access to even more capital and further increasing the risk of failure.[97]

B. Discrimination in Access to Contracting Markets

Even when minorities are able to form and develop businesses, discrimination by private sector customers, prime contractors, business networks, suppliers, and bonding companies raises the costs for minority firms, which are then passed on to their customers. This restricts the competitiveness of minority firms, thereby impeding their ability to gain access to public contracting markets.

1. Discrimination by Prime Contractors and Private Sector Customers

In the private sector, minority business owners face discrimination that limits their opportunities to work for prime contractors and private sector customers. All too often, contracting remains a closed network, with prime contractors maintaining long-standing relationships with subcontractors with whom they prefer to work.[98] Because minority owned firms are new entrants to most markets, the existence and proliferation of these relationships locks them out of subcontracting opportunities. As a result, minority-owned firms are seldom or never invited to bid for subcontracts on projects that do not contain affirmative action requirements.[99] In addition, when

[87] Timothy Bates, *Commercial Bank Financing of White and Black Owned Small Business Start-ups,* Quarterly Review of Economics and Business, Vol. 31, No. 1, at 79 (1991) (''The findings indicate that black businesses are receiving smaller bank loans than whites—not because they are riskier, but, rather, because they are black-owned businesses.'').

[88] Grown & Bates, *Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies,* Journal of Urban Affairs, Vol. 14, No. 1, at 34 (1992).

[89] Bradford & Bates, *Factors Affecting New Firms Success and their Use in Venture Capital Financing,* Journal of Small Business Finance, Vol. 2, No. 1, at 23 (1992) (''The venture capital market * * * differentially restricts minority entrepreneurs from obtaining venture capital.'').

[90] Faith Ando, *Capital Issues and the Minority-Owned Business,* The Review of Black Political Economy, Vol. 16, No. 4, at 97 (1988).

[91] Grown & Bates, *Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies,* Journal of Urban Affairs, Vol. 14, No. 1, at 34 (1992).

[92] The Colorado Center for Community Development, University of Colorado at Denver, *Survey of Small Business Lending in Denver* v. (1996). See Michael Selz, *Race-Linked Gap is Wide in Business-Loan Rejections,* Wall St. J., May 6, 1996, at B2.

[93] The Colorado Center for Community Development, University of Colorado at Denver, *Survey of Small Business Lending in Denver* v. (1996).

[94] *Id.*

[95] *Id.*

[96] There is also evidence that minorities face discrimination in mortgage lending. See Munnell *et al., Mortgage Lending In Boston: Interpreting the HMDA Data,* 86 Am. Econ. Rev. 25 (1996) (finding that minority applicants were 60 percent more likely to be rejected for a mortgage loan than white males with identical characteristics, including age, income, wealth, and education). This serves to aggravate the problems that minorities face in seeking business loans, because an important source of collateral for such loans to a new firm is the home of the owner of the firm. Thus, mortgage discrimination that impedes the ability of minorities to obtain loans to purchase homes (or drives them to purchase less valuable homes than they otherwise would) diminishes their ability to post collateral for business loans.

[97] United States Commission on Minority Business Development, Final Report 6 (1992). While the nation has made great strides in overcoming racial bias, the Commission's apt characterization of the debilitating effects of lending discrimination mirrors the description of the problem in a landmark monograph written over one-half century ago:

The Negro Businessman encounters greater difficulties than whites in securing credit. This is partially due to the marginal position of negro business. It is also partially due to prejudicial opinions among whites concerning business ability and personal reliability of Negroes. In either case a vicious circle is in operation keeping Negro business down.

Gunnar Myrdal, *An American Dilemma: The Negro and Modern Democracy* 308 (6th ed. 1944).

[98] See New Haven Board of Aldermen, *Minority and Women Business Participation in the New Haven Construction Industry* 10 (1990) (''The construction industry in New Haven remains to a large extent a closed network of established contractors and subcontractors who have close long-term relationships and are highly resistant to doing business with 'outsiders.'''); Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia,* Pt. II, 61 (1990) (member of trade association testified that ''contractors develop good working relationships with certain subcontractors and tend to use them repeatedly, even in a few cases when their prices are just a little bit higher than other subcontractors'').

[99] See National Economic Research Associates, *The State of Texas Disparity Study: A Report to the Texas Legislature as Authorized by H.B. 2626, 73rd Legislature* 148 (1994) (''African American owner * * * told by an employee of a prime contractor that the contractor prefers to work with [nonminority-owned firms] and works with [minority-owned firms] only when required to do so.''); D.J. Miller & Associates, *Disparity Study for Memphis/Shelby County Intergovernmental Consortium* VII–10 (1994) (''Majority companies will not do business with [minority-owned businesses] because they lack confidence in [them] and are not willing to go beyond those businesses with whom they have a 10 to 15 year relationship.''); Brown, Botz & Coddington, *Disparity Study: City of Phoenix* VIII–10 (July 1993) (''From the responses of a number of MBE/WBEs, another form of marketplace discrimination that severely hampers their access to the marketplace is denial of the opportunity to bid. This may occur in a variety of ways, including, but not limited to, the use of non-competitive procurement and selection procedures, as well as intentional acts of rejection.''); National Economic Research Associates, *The Utilization of Minority and Woman-Owned Businesses by Contra Costa County: Final Report* ix, xiii (1992) (70 percent of minority-owned firms reported seldom or never being used for contracts that do not contain affirmative action requirements); National Economic Research Associates, *The Availability and Utilization of Minority-Owned Business Enterprises at the*

minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. This sort of exclusion is often achieved by white firms refusing to accept low minority bids or by sharing low minority bids with another subcontractor in order to allow that business to beat the bid (a practice known as ''bid shopping'').[100] These exclusionary practices have been the subject of extensive testimony in congressional hearings.[101]

An Atlanta study revealed evidence of the effect of discrimination by private sector customers and prime contractors on minority contracting opportunities. The study found that 93 percent of the revenue received by minority-owned firms came from the public sector and only 7 percent from the private sector. In sharp contrast, the study found that nonminority firms receive only 20 percent of their revenue from the public sector and 80 percent from the private sector.[102] In addition, the study reported that nearly half of the black-owned firms worked primarily for minority customers, and minority firms rarely worked in a joint venture with a white-owned firm.[103]

Customer prejudices are sometimes graphically expressed. African American business owners have reported arriving at job cites to find signs saying ''No Niggers Allowed,'' [104] and ''Nigger get out of here.'' [105] Other potential customers have simply refused to work with a business after discovering that its owner is a minority. In a recent encounter, a black business owner arriving at a home-site was told to leave by a white customer, who commented ''you didn't tell me you were black and you don't sound black.'' [106]

2. Discrimination by Business Networks

Contrary to the common perception, contracting is not a ''meritocracy'' where the low bidder always wins. ''(B)eneath the complicated regulations and proliferation of collective bargaining contracts lies a different reality, one dominated mainly by personal contacts and informal networks.'' [107] These networks can yield competitive advantages, because they serve as conduits of information about upcoming job opportunities and facilitate access to the decisionmakers (*e.g.*, contracting officers, prime contractors, lenders, bonding agents and suppliers). Simply put, in contracting, access to information is a ticket to success; lack of information can be a passport to failure. Networks and contacts can help a business find the best price on supplies, facilitate a quick loan, foster a relationship with a prime contractor, or yield information about an upcoming contract for which the firm can prepare—all of which serve to make the firm more competitive.

What transforms the mere existence of established networks into barriers for minority-owned businesses is the extent to which they operate to the exclusion of minority membership. It has been recognized in Congress that private sector business networks frequently are off-limits to minorities: ''institutional wall(s),'' and ''old-boy network(s) * * * make( ) it exceedingly difficult for minority firms to break into the private commercial sector.'' [108] Parallel descriptions appear in numerous state and local studies.[109] Ultimately,

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Massachusetts Water Resources Authority 74 (1992) (55 percent of minority-owned construction firms reported that prime contractors that use their firms on contracts with affirmative action requirements seldom or never used their firms on projects that do not contain such requirements); *A Study to Identify Discriminatory Practices in the Milwaukee Construction Marketplace* 125 (Feb. 1990) (''Only 18% of black contractors currently have private sector contracts with primes with which they have worked on public sector contracts with MBE requirements.''); see also *Coral Constr. Co.* v. *King County*, 941 F.2d 910, 916 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992) (noting reports that nonminority firms in the county refused to work with minority firms); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.), cert. denied, 498 U.S. 983 (1990) (noting reports that when minority contractors in the county ''approached prime contractors, some prime contractors either were unavailable or would refuse to speak to [the minority contractors]'').

[100] See *Associated Gen. Contractors v. Coalition for Economic Equity*, 950 F.2d 1401, 1416 (9th Cir. 1991), cert. denied, 503 U.S. 985 (1992) (noting reports that local minority firms were ''denied contracts despite being the low bidder,'' and ''refused work even after they were awarded the contracts as low bidder''); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.), cert. denied, 498 U.S. 983 (1990) (''[c]ontrary to their practices with non-minority subcontractors,'' local prime contractors would take minority subcontractors' bids ''around to various non-minority subcontractors until they could find a non-minority to underbid [the minority firm]''); BBC Research and Consulting, *Regional Disparity Study: City of Las Vegas* IX–12 (1992) (low bidding Hispanic contractor told that he was not given subcontract because the prime contractor ''did not know him'' and that the prime ''had problems with minority subs in the past''); BPA Economics, *MBE/WBE Disparity Study for the City of San Jose (Vol. 1)* III–1 (1990) (describing practices contributing to low utilization in construction contracts as including ''bid shopping, insufficient distribution of notices of contracts [and] insufficient lead time to prepare bids''); BBC Research and Consulting, *The City of Tucson Disparity Study* IX–9–IX–11 (June 1994) (same).

[101] See, *e.g.*, *How State and Local Governments Will Meet the Croson Standard: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 1st Sess. 54 (1989) (statement of Marc Bendick) (''[t]he same prime contractor who will use a minority subcontractor on a city contract and will be terribly satisfied with the firm's performance, will simply not use that minority subcontractor on a private contract where the prime contractor is not forced to use a minority firm.''); *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond v. J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the Comm. on Government Operations*, 101st Cong., 2d Sess. 57 (1990) (statement of Gloria Molina); *id.* at 100–101 (statement of E.R. Mitchell); *id.* at 113 (statement of Manuel Rodriguez); *A Bill to Reform the Capital Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 1st Sess. 593 (1987) (statement of Edward Irons); *Small Disadvantaged Business Issues: Hearings Before the Investigations Subcomm. of the House Comm. on Armed Services*, 100th Cong., 1st Sess. 19–23 (1991) (statement of Parren Mitchell).

[102] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. I, 9–10 (1990). See also D.J. Miller & Associates, *City of Dayton: Disparity Study* 183 (1991) (''A small percentage of Black firms' revenues come from private sector projects.'').

[103] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. III, 15, 34 (1990).

[104] New Haven Board of Aldermen, *Minority and Women Participation in the New Haven Construction Industry* 10 (1990).

[105] National Economic Research Associates, *The Utilization of Minority and Women-Owned Businesses by the City of Hayward* 6–23 (1993).

[106] See BBC Research and Consulting, *City of Tuscon Disparity Study* IX–23 (1994).

[107] Bailey & Waldinger, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction*, Politics and Society, Vol. 19, No. 3, 298 (1991). See Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. II, 35 (1990) (''(M)ost job seekers find their jobs through informal channels. So too it is with construction markets, especially in the private sector.'').

[108] *Minority Business Development Program Reform Act of 1987: Hearings on S. 1993 and H.R. 1807 Before the Senate Comm. on Small Business*, 100th Cong., 2d Sess. 127 (1988) (statement of Parren Mitchell). See H.R. Rep. No. 870, 103d Cong., 2d Sess. 15 n.36 (''The construction industry is close-knit; it is family dominated (and reflects an) old buddy network. Minorities and women, unless they are part of construction families, have been and will continue to be excluded whenever possible.''); *Minorities and Franchising: Hearings Before the House Comm. on Small Business*, 102d Cong., 1st Sess. 54 (1991) (statement of Rep. LaFalce) (discussing ''problems relating to exclusion of minorities or groups of minorities from franchise systems''); 131 Cong. Rec. 17,447 (1985) (statement of Rep. Schroeder) (an ''old boy's club'' excludes many minorities from business opportunities).

[109] See, *e.g.*, *Associated Gen. Contractors* v. *Coalition for Economic Equity*, 950 F.2d 1401, 1414 (1991) (municipal study showed that there ''continued to operate an 'old boy network' in awarding contracts, thereby disadvantaging (minority firms)''), cert. denied, 503 U.S. 985 (1992); BBC Research & Consulting, *The City of Tuscon Disparity Study* 202 (1994) (citing ''numerous detailed examples of the exclusionary operation of good old boy networks''); National Economic Research Associates, *The Utilization of Minority and Women Owned Business Enterprises by the Southeastern Pennsylvania Transportation Authority* 107 (1993) (exclusion from 'old-boy'

Continued

exclusion from business networks ''isolate(s minorities) from the 'web of information' which flows around opportunities'' thereby putting them at a distinct disadvantage relative to nonminority firms.[110] In government contracting, this disadvantage can be fatal: ''(government) vendors who do get contracts, experts agree, have obtained vital bits of information their competitors either ignored or couldn't find. * * * (O)nly the well connected survive.'' [111]

Restricted access to business networks can particularly disadvantage minorities in the planning stages of government procurement. In designing contracts for public bidding, agencies commonly consult businesses to make sure that specifications match available services. Only bidders who meet the specifications may compete for the contract and the exclusion of minority-owned businesses from planning and consultations can lead to specifications that are written so narrowly as to exclude minority bidders.[112] In addition, the failure to consult minority-owned businesses during the planning stages of procurement prevents them from mobilizing resources for the upcoming competition. As a committee of Congress recently reported, ''(m)inorities and women are always left out in any kind of design or planning phase for these projects, and that is why when (they) first know about them * * * it is traditionally too late to get (their) forces and resources together to react.'' [113]

3. Discrimination in Bonding and By Suppliers

The competitiveness of bids on public and private contracts is not determined solely by the bidder's resources. Rather, competitiveness often hinges on the ability of the bidding company to obtain quality services from bonding companies and suppliers at a fair price. Here too, discrimination places minority firms at a disadvantage.

All contractors on federal construction, maintenance, and repair contracts valued at over $100,000 are required to secure a surety bond guaranteeing the performance of the contract.[114] To obtain bonding, most surety companies require that a firm present a record of experience to substantiate its ability to perform the job. This mandate often lands minorities in the middle of a vicious circle. Since a history of discrimination has prevented many minority companies from gaining experience in contracting, they cannot get bonding. And since they cannot get bonding, they cannot get experience. As Congress has recognized, this dilemma ''serves to preclude equitable minority business participation in federal construction contracts.'' [115]

Congress also has realized that minorities are disadvantaged by their exclusion from business networks that facilitate bonding, because ''firms tend to give performance and payment bonds to people they already know and not to the new business person, especially if the small business owner is a woman or of a racial or ethnic minority.'' [116] Furthermore, Congress has considered evidence indicating that bonding agents, like lenders, inject racial biases into the bonding process.[117] Evidence of discrimination in bonding also has been accumulated in a number of state and local studies.[118] These problems have made minority businesses significantly less able to secure bonding on equal terms with white-owned firms with the same experience and credentials. For example:

- A Louisiana study found that minority firms were nearly twice as likely to be rejected for bonding, three times more likely to be rejected for bonding for over $1 million, and on average were charged higher rates for the same bonding policies than white firms with the same experience level.[119]
- An Atlanta study found that 66 percent of minority-owned construction

networks ''was the most frequently cited problem'' of minority and women-owned firms); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by the City of Hayward* 6–14 (1993) (''75 percent of the witnesses cited problems breaking into established 'old-boy' networks''.).

[110] *United States* v. *Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973) (finding that district court's ''failure to order (word-of-mouth recruitment practices) to be supplemented by affirmative action * * * was clearly an abuse of power''). See National Economic Research Associates, *Availability and Utilization of Minority and Women Owned Business Enterprises at the Massachusetts Water Resources Authority* 74 (1990) (finding that minorities ''need to spend much more time and money on marketing because they do not have established networks and reputations''); Minority Business Enterprise Legal Defense and Education Fund, *An Examination of Marketplace Discrimination in Durham County* 16 (1991) (citing ''numerous allegations that black contractors * * * learned of bid opportunities much later than their white competitors that are tied into the 'good old boy' network'').

[111] Kevin Thompson, *Taking the Headache Out of Government Contracts*, Black Enterprise 219 (1993).

[112] This is accomplished by, for example, specifying that bidders must use certain brand-name products available only to several companies, specifying a depth of contract experience that minority-owned firms can rarely provide, and bundling projects into large contracts that small minority-owned companies cannot perform. See, *e.g.*, H.R. Rep. No. 870, 103d Cong., 2d Sess. 14 (1994) (citing recommendation that agencies separate ''contracts into smaller parts, so that M&WOSB's would be able to participate in those opportunities''); Mason Tillman Associates, *Sacramento Municipal Utility District: M/WBE Disparity Study* 146 (1992) (noting that, in many instances, contract specifications are written so narrowly that there are only a few firms that can do the job); Tuchfarber *et al.*, *City of Cincinnati: Croson Study* 153 (1992) (''Products specified in the Request for Proposals were so narrow that only one company that had exclusive distribution of the product specified could satisfy the contract.'').

[113] H.R. Rep. No. 870, 103d Cong., 2d Sess. 13 (1994).

[114] 40 U.S.C. §§ 270a–270e.

[115] United States Congress, *Federal Compliance to Minority Set-Asides: Report to the Speaker, U.S. House of Representatives, by the Congressional Task Force on Minority Set-Asides* 29 (1988). See also H.R. Rep. No. 870, 103d Cong., 2d Sess. 14 (1994) (''Inability to obtain bonding is one of the top three reasons that new minority small businesses have difficulty procuring U.S. Government contracts.''); *Minority Business Participation in Department of Transportation Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 99th Cong., 1st Sess. 159 (1985) (statement of Sherman Brown) (''Virtually everyone connected with the minority contracting industry * * * apparently agrees that surety bonding is one of the biggest obstacles in the development of minority firms.'').

[116] H.R. Rep. No. 870, 103d Cong. 2d Sess. 15 (1994).

[117] See *Discrimination in Surety Bonding: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. 2 (1993) (statement by Rep. Kweisi Mfume) (''Similarities between a banker's ability to make arbitrary credit decisions and a surety producer or an underwriter's capability of injecting personal prejudice into the bonding process are compelling indeed.''); *City of Richmond* v. *J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 40 (1990) (statement of Andrew Brimmer); id. at 165–66 (statement of Edward Bowen); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. 107 (1988) (statement of Marjorie Herter) (''Discrimination against women and minorities in the bonding market is quite prevalent'').

[118] See Division of Minority and Women's Business Development, *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State*, Executive Summary 57 (1992) (noting that 47 witnesses reported ''specific incidents of racial discrimination * * * in attempting to secure performance bonds''); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by Alameda County* 202, 212 (June 1992) (nearly 50 percent of minority businesses reported experiencing bonding discrimination); National Economic Research Associates, *The Utilization of Minority and Women-Owned Businesses Enterprises by Costa County* 231, 241 (May 1992) (noting evidence of bonding discrimination); Board of Education of the City of Chicago, *Report Concerning Consideration of the Revised Plan for Minority and Women Business Enterprise Economic Participation* 316 (1991) (''Bonding is selectively and capriciously provided or denied with the decision being 85 percent subjective.''); Mason Tillman Associates, *Sacramento Municipal Utility District, M/WBE Disparity Study* 119, 135–43 (1990) (noting evidence of bonding discrimination).

[119] D.J. Miller & Associates, *State of Louisiana Disparity Study* Vol. 2, pp. 35–57 (June 1991).

firms had been rejected for a bond in the last three years, 73 percent of those firms limited themselves exclusively to contracts that did not require bonding, and none of them had unlimited bonding capacity. By contrast, less than 20 percent of nonminority firms had unlimited bonding capacity.[120]

Another factor restricting the ability of minority-owned businesses to compete in both private and public contracting is discrimination allowing ''non-minority subcontractors and contractors [to get] special prices and discounts from suppliers which [are] not available to [minority] purchasers.'' [121] This drives up anticipated costs, and therefore the bid, for minority-owned businesses. A recent survey reported that 56 percent of black business owners, 30 percent of Hispanic owners, and 11 percent of Asian business owners had experienced known instances of discrimination in the form of higher quotes from suppliers.[122] Numerous other state and local studies have reported similar findings.[123]

In one glaring case, a firm in Georgia began sending white employees to purchase supplies posing as owners of a white-owned company. The ''white-front'' routinely received quotes on supplies that were two thirds lower than those quoted to the minority-owned parent company.[124] Another firm entered into a joint venture with a white firm and each obtained quotes from the same supplier for the same project. When the two firms compared the quotes, they discovered that those given to the minority-owned firm were so much higher than those given to his white joint venture partner that they would have added 40 percent to the final contract price.[125]

C. Evidence of the Impact of Discriminatory Barriers on Minority Opportunity in Contracting Markets: State and Local Disparity Studies

In recent years, many state and local governments have undertaken formal studies to determine whether there is evidence of racial discrimination in their relevant contracting markets that would justify the use of race-conscious remedial measures in their procurement activities. These studies—many of which have been cited in the previous sections of this memorandum—typically contain extensive statistical analyses that have revealed gross disparities between the availability of minority-owned businesses and the utilization of such businesses in state and local government procurement. Under the rules established by the Supreme Court in its 1989 *Croson* decision, which held that affirmative action at the state and local level is subject to strict scrutiny, such disparities can give rise to an inference of discrimination that can serve as the foundation of race-conscious remedial measures in procurement.[126] The studies also generally contain anecdotal evidence and expert opinion, developed in hearings, surveys, and reports, that bring the statistical evidence to life and vividly illustrate the effects of discrimination on procurement opportunities for minorities.

The federal government obviously purchases some goods and services that state and local governments do not (*e.g.*, space shuttles, naval warships). For the most part, though, the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities.[127] Accordingly, the Justice Department asked the Urban Institute (UI) to analyze the statistical findings in the studies. On the strength of the findings in 39 studies that it considered, UI has reached the following conclusions: [128]

- The studies show underutilization by state and local governments of African American, Latino, Asian and Native American-owned businesses. The pattern of disparity across industries varies with racial and ethnic groups. However, the median disparity figures calculated by UI demonstrate disparities for all ethnic groups in every industry.[129]
- Minority-owned businesses receive on average only 59 cents of state and local expenditures that those firms

[120] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. III, 131–38 (1990).

[121] *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.) cert. denied, 498 U.S. 983 (1990). Evidence of pricing discrimination outside the contracting setting indicates that the problem cuts across the economy. For example, a recent testing study of automobile purchases showed that, on average, black men were charged nearly $1,000 more for cars than white men. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 Harv. L. Rev. 817 (1991).

[122] National Economic Research Associates, *The Utilization of Minority and Woman-Owned Businesses by the Regional Transportation District (Denver Colorado): Final Report* 16–23 (1992).

[123] See National Economic Research Associates, *The State of Texas Disparity Study: A Report to the Texas Legislature* as Authorized by H.B. 2626, 73rd Legislature 148 (1994) (Hispanic business owner denied credit by supplier who told him that ''we only sell on a cash basis to people of your kind''); D.J. Miller & Associates, *Disparity Study for Memphis/Shelby County Intergovernmental Consortium* 117 (1994) (''Other frequent complaints pertaining to informal barriers included being completely stopped by suppliers' discriminatory practices.''); BBC Research Associates, *Disparity Study for the City of Fort Worth* IX–20 (1993) (citing evidence that suppliers discriminate against minorities by ''refus[ing] to sell or sell[ing] at higher prices than [to] whites''); Division of Minority and Women's Business Development, *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State*, Executive Summary, 53 (1992) (53 witnesses reported ''specific incidents of racial discrimination * * * where materials or equipment suppliers would not extend the same payment terms and discounts to them as they knew were being made available to white male owned contractors with the same financial histories''); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by Alameda County* 187 (1992) (41% of minority-owned business respondents reported experiencing discrimination in quotes from suppliers); *City of Dayton, Disparity Study* 101 (1991) (citing evidence of discriminatory pricing); D.J. Miller & Associates, *City of St. Petersburg Disparity Study* 39–40 (1990) (''Discrimination by suppliers has also prevented [minority-owned businesses] from entering successful bids.''); Mason Tillman Associates, *Sacramento Municipal Utility District, M/WBE Disparity Study* 135–43 (1990).

[124] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia* Pt. II, 76 (1990).

[125] BBC Research and Consulting, *Regional Disparity Study: City of Las Vegas* IX–20 (1992).

[126] In describing what it takes for the government to establish a remedial predicate in procurement, the Court in *Croson* said that ''[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the [government] or the [government's] prime contractors, an inference of discriminatory exclusion could arise.'' 488 U.S. at 509.

[127] The studies are also of particular relevance in assessing the compelling interest for congressionally-authorized affirmative action measures in programs that provide federal funds to state and local governments for use in their procurement.

[128] To date, UI has evaluated 56 of the studies. Ultimately, UI excluded 17 of the 56 studies from its analysis, on the grounds that those studies do not present disparity ratios; do not present tests of statistical significance or number of contracts; do not present separate results by industry; or do not present disparity ratios based on government contracting.

[129] UI's findings of underutilization are predicated on two different measures: the median disparity ratio across all studies and the percent of studies reporting substantial underutilization (defined as a disparity ratio of less than 0.8). A disparity ratio is the proportion of government contracting received by minority-owned firms to the proportion of available firms that are minority-owned. Thus, a disparity ratio of 0.8 indicates that businesses owned by members of a minority group received only 80 cents of every dollar expected to be allocated to them based on their availability. UI's findings of disparity do not change substantially when analysis is limited to studies with either a large number of contracts or high availability. In fact, in most instances, the disparity between availability and utilization was greater in studies that involve large numbers of contracts.

would be expected to receive, based on their availability. The median disparities vary from 39 cents on the dollar for firms owned by Native Americans to 60 cents on the dollar for firms owned by Asian-Americans.

• Minority firms are underutilized by state and local governments in all of the industry groups examined: Construction, construction subcontracting, goods, professional services and other services. The largest disparity between availability and utilization was seen in the category of ''other services,'' where minority firms receive 51 cents for every dollar they were expected to receive. The smallest disparity was in the category of construction subcontracting, where minority firms still receive only 87 cents for every dollar they would be expected to receive.

An important corollary to UI's findings is the experience following the Supreme Court's 1989 ruling in *Croson*. In the immediate aftermath of that case, state and local governments scaled back or eliminated altogether affirmative action programs that had been adopted precisely to overcome discriminatory barriers to minority opportunity and to correct for chronic underutilization of minority firms. As a result of this retreat from affirmative action, minority participation in state and local procurement plummeted quickly. To cite just a few examples:

• After the court of appeals decision in *Croson* invalidating the City of Richmond's minority business program in 1987, minority participation in municipal construction contracts dropped by 93 percent.[130]

• In Philadelphia, public works subcontracts awarded to minority and women-owned firms declined by 97 percent in the first full month after the city's program was suspended in 1990.[131]

• Awards to minority-owned businesses in Hillsborough County, Florida, fell by 99 percent after its program was struck down by a court.[132]

• After Tampa suspended its program, participation in city contracting decreased by 99 percent for African American-owned businesses and 50 percent for Hispanic-owned firms.[133]

• The suspension of San Jose's program in 1989 resulted in a drop of over 80 percent in minority participation in the city's prime contracts.[134]

Together, the information in the state and local studies, and the impact of the cut-back in affirmative action at the state and local level after *Croson*, provide strong evidence that further demonstrates the compelling interest for affirmative action measures in federal procurement. The information documents that the private discrimination discussed previously in part II of this memorandum—discrimination by trade unions, employers, lenders, suppliers, prime contractors, and bonding providers—substantially impedes the ability of minorities to compete on an equal footing in public contracting markets. And it these same discriminatory barriers that impair minority opportunity in federal procurement. The information also indicates that, without affirmative action, minorities would tend to remain locked out of contracting markets.

The information also helps to illuminate what it is that Congress is seeking to redress—and hence what interests are served—through remedial action in federal procurement. First, Congress has a compelling interest in exercising its constitutional power to remedy the impact of private discrimination on the ability of minority businesses to compete in contracting markets that is reflected in the studies. Second, Congress has a compelling interest in exercising its constitutional power to redress the statistical disparities reflected in the studies that give rise to an inference of discrimination by state and local governments, or at minimum suggest that those governments are compounding the impact of private discrimination through ostensibly neutral procurement practices that perpetuate barriers to minority contracting opportunity.[135] Finally, Congress has a compelling interest in ensuring that expenditures by the federal government do not inadvertently subsidize the discrimination by private and public actors that is reflected in the studies.[136] Were that to occur, the federal government would itself become a participant in that discrimination through procurement practices that serve to sustain impediments to minority opportunity in national contracting markets.

III. Conclusion

As a nation, we have made substantial progress in fulfilling the promise of racial equality. In contracting markets throughout the country, minorities now have opportunities from which they were wholly sealed off only a generation ago. Affirmative action measures have played an important part in this story. However, the information compiled by the Justice Department to date demonstrates that racial discrimination and its effects continue to impair the ability of minority-owned businesses to compete in the nation's contracting markets.

The evidence shows that the federal government has a compelling interest in eradicating the effects of two kinds of discriminatory barriers: first, discrimination by employers, unions, and lenders that has hindered the ability of members of racial minority groups to form and develop businesses as an initial matter; second, discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies that raises the costs of doing business for minority firms once they are formed, and prevents them from competing on an equal playing field with nonminority businesses. This discrimination has been, in many instances, deliberate and overt. But it also can take a more subtle form that is inadvertent and unconscious. Either way, the discrimination reflects practices that work to maintain barriers to equal opportunity.

The tangible effects of the discriminatory barriers are documented in scores of studies that reveal stark disparities between minority availability and minority utilization in state and local procurement. In turn, the disparities show that state and local governments themselves are tangled in this web through ostensibly neutral procurement actions that perpetuate the

[130] United States Commission on Minority Business Development, *Final Report* 99 (1992).

[131] *Id.*

[132] *Id.*

[133] Id.

[134] BPA Economics, *et al.*, *MBE/WBE Disparity Study for the City of San Jose*, Vol. III, 118–19 (1990).

[135] The role of state and local governments in impeding contracting opportunities for minority firms is most directly addressed through federal programs that authorize recipients of federal funds to take affirmative action in their procurement activities. Those programs plainly are examples of the exercise of Congress' power under the Fourteenth Amendment to remedy discrimination by state and local governments. See *Adarand*, 115 S. Ct. at 2126 & n.9 (Stevens, J., dissenting). Since that same state and local conduct constitutes an impediment to minority opportunity in contracting markets in which the federal government does business, it also serves as a basis for affirmative action measures in the federal government's own procurement. Therefore, those measures too entail an exercise of Congress' authority under the Fourteenth Amendment. See *id.* at 2132 n.1 (Souter, J., dissenting) (for purposes of exercise of Congress' power under the Fourteenth Amendment, there is no difference between programs in which ''the national government makes a construction contract directly'' and programs in which ''it funnels construction money through the states'').

[136] See *Croson*, 488 U.S. at 492.

discriminatory barriers. The very same discriminatory barriers that block contracting opportunities for minority-owned businesses at the state and local levels also operate at the federal level. Without affirmative action in its procurement, the federal government might well become a participant in a cycle of discrimination.

Affirmative action in federal procurement is not the cure-all that will eliminate all the obstacles that racial discrimination presents for minority businesses. No one remedial tool can completely address the full dimension of this problem. Laws proscribing discrimination and general race-neutral assistance to small businesses are critical to the achievement of these ends. But the evidence demonstrates that such measures cannot pierce the many layers of discrimination and its effects that hinder the ability of minorities to compete in our nation's contracting markets. Thus, there remains today a compelling interest for race-conscious affirmative action in federal procurement.

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federal register

Thursday
May 23, 1996

Part VII

The President

Proclamation 6900—National Maritime Day, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6900 of May 21, 1996

National Maritime Day, 1996

By the President of the United States of America

A Proclamation

The men and women of the United States Merchant Marine stand prepared to help our Nation in times of crisis. Their outstanding professionalism and performance have been manifest throughout America's proud history, most recently in the Persian Gulf, Haiti, and Somalia. Today, these brave individuals continue to bring honor to the maritime community and to our country through their steadfast service to our troops in Bosnia.

Those working on and in support of U.S. vessels play another important role by strengthening our economy. Every day, merchant ships carry the Nation's domestic and foreign commerce, acting as an integral part of our seamless transportation system. Those aboard go to sea to move American goods and materials, to help provide aid and comfort to others around the world, and, when necessary, to defend our interests and to seek international peace.

The Maritime Security Program legislation currently before the Congress will preserve a strong sealift capability so that critical military cargoes can reach American troops and our allies abroad as they strive to fulfill their peacekeeping and humanitarian missions. It will protect American jobs and foster our efforts to expand international trade. In standing behind this important measure, we affirm our commitment to maintaining a strong U.S.-flag presence on the high seas for our continued national security and economic growth.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' and has authorized and requested the President to issue annually a proclamation calling for its observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 1996, as National Maritime Day. I urge all Americans to observe this day with appropriate ceremonies, activities, and programs and by displaying the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Forest Service

National recreation areas:
- Smith River National Recreation Area, CA; mineral operations; published 5-8-96

AGRICULTURE DEPARTMENT

Agricultural Trade Development and Assistance Act:
- Agricultural commodities; commercial sales financing; published 4-23-96

Organization, functions, and authority delegations:
- Under Secretary for Farm and Foreign Agricultural Services et al.; published 5-23-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Tolazoline hydrochloride injection; published 5-23-96

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon administration presidential historical materials; preservation, protection, and access procedures; published 4-23-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; published 4-18-96
- Boeing; published 4-23-96
- Saab; published 4-23-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison--
  - Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
- Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96

International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96

Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Volatile organic compound (VOC) emissions--
  - Automobile refinish coatings; comments due by 5-30-96; published 4-30-96

Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-96; published 4-30-96
- Florida; comments due by 5-28-96; published 4-25-96
- Kansas and Missouri; comments due by 5-28-96; published 4-25-96
- Wisconsin; comments due by 5-29-96; published 4-29-96

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- Kentucky; comments due by 5-28-96; published 4-26-96
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- South Carolina; comments due by 5-28-96; published 4-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
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  - Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

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Reports by political committees:
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  - Reductions in force; comments due by 5-31-96; published 3-7-96

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Health Care Financing Administration

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- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT

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Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

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- Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 641/P.L. 104–146

Ryan White CARE Act Amendments of 1996 (May 20, 1996; 110 Stat. 1346)

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