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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 403 and 457

General Crop Insurance Regulations; Peach Crop Insurance Regulations, and Common Crop Insurance Regulations; and Peach Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of peaches. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current peach (fresh) crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect to the current peach crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATE: August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) previously approved by OMB under OMB control number 0563–0053. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of the rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, November 19, 1996, FCIC published a notice of proposed rulemaking, in the **Federal Register** at 61 FR 58786 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.153, Peach Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring peaches found at 7 CFR part 403 (Peach (Fresh) Crop Insurance Regulations). FCIC also amends 7 CFR 403 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 116 comments were received from FCIC, the National Peach Council, state peach councils, peach growers, and the reinsured companies. The comments received, and FCIC's responses, are as follows:

Comment: The peach council made several recommendations on peach appraisals: (a) Adjustments be made in the field, (b) quality adjustments be made for all insured causes of loss, (c) signatures of the producer and adjuster be required on all appraisals, (d) arbitration or similar process be used for unsatisfactory adjustments, and (e) regulations should clearly provide unencumbered ownership of any remaining peaches after a claim is settled.

Response: Adopting recommendations in (a), (b) and (c) would simplify the settlement of claims and result in earlier payment of an indemnity, but they are not appropriate under insurance principles. Although peach appraisal methods are believed to be reliable, they are not as accurate as measured final production. Production to count of peaches may change greatly during the last few days before maturity, depending on how the peach sizes during the final swell stage. To protect its interests, the insurance provider would be required to assume that maximum sizing would occur. This may be contrary to the producers' interests. Use of arbitration is mandated by section 17 of the Common Crop Insurance Policy Basic Provisions whenever the crop is insured under a contract reinsured by FCIC. When the producer and the insurance provider agree on the settlement of the claim, insurance on the unit will end. The producer owns any peaches that remain on the unit. For these reasons, no changes have been made.

Comment: The peach council noted that the responsibilities of producers are apparently even greater under the proposed peach policy than in the current policy. Notification by the producer is required, for each insured unit, on at least 5 occasions: (a) Within 72 hours of initial discovery of damage; (b) ''any circumstance that may affect the yield'; (c) 15 days prior to direct marketing; (d) within 3 days of the date that harvest ''* * * should have started if the crop will not be harvested'; and (e) ''* * * at least 15 days prior to the beginning of harvest of the damaged variety, if you previously gave notice * * *'' The Regulatory Flexibility Act review section summarized in the **Federal Register** notice states, ''this rule does not have any greater or lesser impact on the producer,'' and thereby claims exemption to a Regulatory Flexibility Analysis. The council contended that the impact to peach producers is indeed greater under the proposed rule. The council proposes, once initial notification of potential crop damage is provided by the producer to the insurance provider, responsibility for tracking crop status should be shared by the producer and the insurance provider.

Response: FCIC does not agree that the burden on the typical insured is materially greater under the proposed provisions than under the current policy. The typical insured is not required to provide 5 notices for every insured unit. Only those notices that are appropriate for each unit are required. The requirements that the producer give notice of circumstances that may affect the yield compared to prior years and within 15 days of direct marketing have been added. Previously, direct marketed production was not insurable. With the extension of insurance to such production appropriate notice provisions were added. However, relatively few producers should be affected since these conditions are the exception, not the norm. The other three events requiring notice are contained in the present policy, but the time of notice may have changed to assure that the insurance provider has opportunity to timely assess the damage and determine the amount of the loss. The insurance provider does have responsibility for tracking the potential for loss adjustment activity once initial notices are provided by producers. This assures that an adequate number of adjusters will be available. However, only the producers know the stage of development of the crop on a particular unit, and must bear the responsibility for promptly advising the insurance provider so that the loss adjustment can be performed in a timely manner. Therefore, no change has been made.

Comment: The peach councils and peach growers proposed a change to improve equity in the actual production history (APH) calculation. These commenters maintain that more equitable APH determination must be enacted in these regulations, and proposed that a 5-year APH be derived by using 8 years of production history but eliminating the 2 lowest and 1 highest yields. They stated that this method of calculating APH will help mitigate wild APH yield swings.

Response: There is no statutory authority to eliminate reported production history. Therefore, no change has been made.

Comment: The peach councils proposed that the practice of devising and assigning ''transitional yields'' be addressed in the peach policy to offer guidelines that: (1) Are more consistent from region to region; (2) are more closely related to APH and related to producing areas within the respective regions; and (3) require favorable yield adjustments for commercial producers with proven production skills and sound management practices.

Responses: Transitional yields are determined in accordance with 7 CFR part 400, subpart G and are consistent for all crop policies. To change the methodology for determining such yields on a crop, region, or farm basis would significantly increase the administrative burden on the program and subject it to greater program vulnerabilities. Production capabilities are different between producers depending on a myriad of factors including farming practices, soil types, climate, etc. Use of standardize transitional yields will ensure that all producers are treated equally until they establish their own yield bases. Therefore, no change has been made.

Comment: The peach councils proposed to alleviate policy problems by (1) excluding commercial peach packers from the definition of ''direct marketing;'' (2) identifying the intended marketing path of insured peaches in the definition; (3) requiring that direct marketers make their declaration in the insurance contract; (4) covering direct marketers under a separate specialized peach policy, possibly through a pilot program; (5) that pick-your-own operations be identified in the insurance contract and be covered under a policy distinct from the policy covering commercial peach producers. A separation of this sort should streamline the process for the insured and insurance provider. They also proposed that commercial producers should be excluded from ''Direct Marketing'' and that for producers declaring a direct marketing intent, the proposed 15 day notification period is indeed unreasonable and should be changed to require 7 days notice before the actuarial practice of direct marketing begins; and (6) notification that the 15 day notification requirement in section 10(b) be deleted.

Response: With respect to liability and risk, there is generally no distinction between direct marketed production and production marketed through a processor. The only difference is the insurance providers ability to accurately determine the amount of production. The 15 day notice requirement is intended to give insurance providers sufficient time to appraise the loss of production prior to direct marketing. This policy distinction is insufficient to justify the paperwork and administrative burden of creating a separate policy. However, section 10 is modified by adding the provisions that the insured must notify us at least 15 days before any production from any

unit will be sold by direct marketing, unless the producer will have verifiable records to show that direct marketed peaches were harvested and graded through a packing shed. Further, FCIC does not believe the 15 day notice to be unreasonable. The insurance provider needs adequate time to schedule a site visit to appraise the production. Therefore, no change has been made.

Comment: The peach councils recommended from a safety net perspective, that FCIC delete all distinction between ''fresh'' and ''processing'' peaches and that FCIC should offer assurance of a level of production, a price as agreed in the contract, and standardization of loss adjustment procedure for fresh and processing peaches without regard to how the peaches are marketed.

Response: Fresh and processing uses have different requirements for quality as well as different prices and markets. Therefore, fresh and processing peaches must be differentiated to provide a fair insurance offer to producers and an actuarial sound insurance program for the insurance providers. Therefore, no change has been made.

Comment: The peach councils pointed out that the peach industry may move away from the ¾ bushel box, however, the ¾ bushel graded equals 1 bushel ungraded as established by the insurance industry is fair and realistic and the grade/ungraded equivalent relationship should remain.

Response: FCIC recognizes that the unit of measurement for peaches is not always a ¾ bushel. Any unit of measure can be converted to a full 50 pound bushel. Therefore, references to a ¾ bushel carton has been removed from these provisions.

Comment: The peach council asked for an explanation regarding FOB prices in the background section item 13, and section 11.

Response: FCIC has amended the term ''FOB'' in section 1 under the definition for ''Actual price per bushel.'' The shipping point price reported by the Market News Service is used to determine the value of production for the purpose of quality adjustment.

Comment: The crop insurance industry questioned why Freight on Board (FOB) is also used in the definition of ''actual price per bushel'' and recommended it be changed to read ''(FOB) (Freight on Board)'' for reference.

Response: The term ''(FOB) (Freight on Board)'' has been removed from the definitions. However, ''FOB'' will still be used in the term of ''actual price per bushel.''

Comment: The peach councils requested that the Special Provisions be open for comments and modification.

Response: FCIC agrees that the terms of the Special Provisions are important to producers because they are part of the insurance contract. However, the Special Provisions contain those terms and conditions that are unique to an area. Great variations in production and marketing practices make inclusion of all terms into the Crop Provisions impractical. Any person with questions or comments regarding the Special Provisions should direct such comments to the applicable Regional Service Office.

Comment: The peach council recommended that the Secretary be given discretionary authority in the policy to declare a Crop Failure Mitigation Floor under which the decrease in the APH yield would be limited to 10 percent when a commodity within a growing region meets specified parameters for a total or near total crop failure.

Response: Section 508(g) in the Federal Crop Insurance Act, as amended, provides for the calculation of APH. This section requires a straight average of the annual yield in the data base and does not authorize the use of yield ceilings or floors. Therefore, no change has been made.

Comment: The peach council contends that standardization of crop policies should not be to the detriment of the peach producers.

Response: FCIC does not believe that standardization of crop policies adversely affects the producers. FCIC makes every possible effort to assure that any unique characteristics of a crop are recognized. This is the reason that the Crop Provisions are used in conjunction with the Common Crop Insurance Policy.

Comment: In three comments received from the peach council, two recommended that the definition ''Actual price per bushel'' be changed by deleting the distinction between fresh and processing peach types. The third commenter suggested deleting the entire paragraph.

Response: The definition ''Actual price per bushel'' is used for quality adjustment purposes. Since marketing prices for fresh and processing uses differ materially, distinction between peach types is necessary. Therefore, no change has been made.

Comment: The peach growers and the crop insurance industry expressed concern with the definition of ''Actual price per bushel'' referring to U.S. Extra No. 1 ''2 inch'' peach. There has not been a market for a ''2 inch'' peach in Pennsylvania and Maryland for many years. Most growers market ''2½ inch'' peaches.

Response: FCIC recognizes that the typical size of marketable peaches varies among regions. For this reason, the definition states that, if the average price is not available for ''2 inch,'' the next larger size for which a price is available will be used. Therefore, no change has been made.

Comment: The peach council recommended that ''adverse weather conditions'' be defined in the context of damage to the insured crop rather than specific weather events. They noted that problems previously have been experienced with events such as ''flooding,'' which technically was not considered flooding because water did not overflow the banks of a nearby river. There was no regard to the crop damage or inability to harvest and market the crop, which was a direct result of excessive moisture. Such technicalities should be avoided.

Response: FCIC agrees that technicalities should be avoided, and believes that the Basic Provisions in conjunction with the Crop Provisions clearly specify that any adverse weather conditions, including excess moisture, that causes damage to the insured crop is covered by the policy. The consequence of adverse weather, such as inability to harvest or market the crop, would be covered as long as cause can be adequately established. However, under the principals of insurance, the actual cause of the loss, inability to harvest etc., must be identified, not just the result of that cause. Therefore, no change has been made.

Comment: Two comments from the peach council recommended changes to the definition of ''Bushel.'' One peach council member proposed changing the definition of ''Bushel'' to better reflect actual practices of peach producers, as well as to parallel other existing industry definitions. The commenter noted that the peach industry is moving from the ¾ bushel box as the unofficial industry standard toward a ½ bushel box to meet marketplace demands. The ½ bushel box is more expensive to pack and distribute. In that light, the existing graded/ungraded relationship equivalent should be consistent, with due consideration given to packaging changes. The commenter proposed that the definition be amended to read, ''A ¾ bushel of graded peaches is considered equivalent to a 50-pound bushel of ungraded peaches.'' Another peach council member proposed deleting the second sentence in the definition of a bushel which states ''A ¾ bushel of graded peaches is

considered equivalent to a forty-eight-pound bushel of ungraded peaches.''

Response: FCIC agrees with the comments and has amended the provision to read ''bushel—fifty pounds of ungraded peaches.''

Comment: The crop insurance industry recommended that in the definition of ''Bushel'' identify who grades the peaches, i.e., a licensed grader.

Response: A licensed grader is only used by the government or processor when the peach production is being shipped to market. For direct marketing producers, i.e., roadside stand, farmers market, u-pick etc., the bushel is a bulk 50 pounds measure and not graded by a licensed grader. Therefore, no change has been made.

Comment: Two comments from the peach council, addressed the definition of ''crop year.'' The peach council opposed the length of the proposed crop year because it further shortened the period producers have to make critical decisions for the upcoming crop by 10 days. The peach council proposed definition is, ''The period beginning December 1 and extending through September 30 of the following year, which is designated by the calendar year in which the insurance period ends.''

Response: The definition of ''crop year'' has been removed from the proposed rule because it is contained in the Common Crop Insurance Policy Basic Provisions. FCIC believes that an insurance attachment date of November 21 rather than December 1 does not pose an undue hardship and simplifies the program because the November 21 date is consistent with other perennial crop insurance policies.

Comment: The peach councils recommended modifying the definition of ''harvest'' by deleting the words ''or removal.'' The comment was based on the potential of usual and customary commercial peach production practices to cause peaches to be unintentionally knocked from the tree. The proposed definition could be misconstrued and misapplied. The council proposed the following definition: ''The picking of mature peaches from the trees either by hand or machine with the intent to sell.''

Response: FCIC believes the words ''removal of peaches'' must remain in the definition to prevent the intentional knocking of peaches to the ground to reduce the production to count in a loss situation. Loss adjustment procedures account for ordinary and customary losses. Therefore, no change has been made.

Comment: The peach council proposed adding a definition for the term ''in the field.''

Response: The term is not used in the policy. Therefore, no change has been made.

Comment: The peach council recommended the definition of ''irrigated practice'' be changed because the proposed definition contains redundancies and is ambiguous. The council recommended changing the definition of ''irrigated practice'' to read ''A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times.''

Response: The definition was written in the current manner to prevent insureds with inadequate irrigation facilities and those who do not supply sufficient water during the crop year from qualifying for an irrigated loss. Therefore, no change has been made.

Comment: A reinsured company recommended adding the words ''and quality'' to the definition of ''irrigated practice.''

Response: FCIC agrees that water quality is an important issue. However, there are no established criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complexity of the factors. Therefore, no change has been made.

Comment: The peach council proposed adding a definition of ''loss in quality.''

Response: A definition of ''loss in quality'' has been added which specifies that the crop must be damaged to the extent that the producer does not receive the price for U.S. Extra No. 1 Peaches.

Comment: The peach council recommended adding a definition ''peach type'' to include all insurable peach types for clarification.

Response: Peach types are not contained in the Crop Provisions. Insurable peach types for the county are listed on the Special Provisions. It is the agent's responsibility to have the current county actuarial documents. Therefore, no change has been made.

Comment: The peach council recommended clarifying the clause in section 2(e)(1) that states ''you must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee'' by adding ''unless the unit is for trees that are in the fourth year of leaf growth or the unit is for insurable trees added since the previous crop year for which no records are available.''

Response: The (APH) Crop Insurance Handbook contains procedures for determining coverage on newly acquired acreage provided the peach trees are in the fourth leaf of growth or the acreage of insurable trees added that have no prior year records. It is the agent's responsibility to have the current procedure. For reason stated, and to be consistent with other crop policies, no change has been made.

Comment: A reinsured company expressed concern that the opening clause of section 2(e)(3)(ii) is not necessary since 2(e)(3) states that optional units must meet one or more of the following criteria.

Response: FCIC agrees with the comment and has amended the provisions accordingly.

Comment: A reinsured company asked what is considered a ''bearing'' tree as opposed to a ''non-bearing'' tree as these terms are used in section 3(b)(2).

Response: FCIC has added a definition of ''bearing tree,'' which based on industry standards, is a tree in at least its 4th growing season after set out.

Comment: The peach council recommended inserting the words ''reasonable and pertinent'' between the words ''other information'' in section 3(b)(4)(iv).

Response: Since the information requested must be necessary to establish the approved yield, it is presumed reasonable and pertinent.

Comment: The peach council recommended deleting the sentence ''If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstances'' from section 3(b)(4)(iv) because broad and ambiguous phrases like ''any circumstance'' are inappropriate and unreasonable.

Response: This provision in its entirety requires information to establish reasonable yields for orchards that are interplanted, for which production practices have changed, etc. If the insurance provider discovers, after an approved yield has been established, that the condition of the orchard is not as reported, the insurance provider must have the right to adjust the production guarantee to reflect the actual condition of the orchard. Therefore, no change has been made.

Comment: A reinsured company questioned why the proposed language in section 6 omitted the reference to peaches ''grown for the production of

fresh and processing peaches (except processing peaches in California'') that is contained in the current policy.

Response: FCIC agrees and has added section 6(c) in these provisions.

Comment: The peach councils recommended the cancellation and termination dates remain November 30.

Response: The cancellation and termination dates were changed from November 30 to November 20 to be consistent with other perennial crop insurance policies. This action was taken to comply with legal directives that the program be simplified. Combining similar dates does reduce complexity. Further, this change is consistent with the change to the date insurance attaches. Therefore, no change has been made.

Comment: The peach councils recommended changing section 8(a)(1) to state that insurance attaches on December 1 or ten (10) days after application for those applications filed after November 21.

Response: FCIC has changed the date to November 21 to be consistent with other perennial crops. Therefore, no change has been made.

Comment: The peach councils and peach growers requested that split pits not be automatically excluded as insured damage. They requested that section 9(b)(2) be revised to read ''Split pits regardless of cause, unless damaged by an insured cause of loss.''

Response: FCIC realizes that the percentage of split pits may increase under certain adverse weather situations. However, some varieties are inherently subject to split pits. It is difficult to identify whether a split pit is the result of natural tendencies or is weather related. Split pits are not always obvious since the damage is internal. Principals of sound insurance require that losses be definite as to time, place, and cause. FCIC does not believe that split pits meet these principles. Therefore, no change has been made.

Comment: The peach councils requested the notification date in section 10(a) be changed from 3 days to 7 days prior to the date that harvest of the damaged variety should have started if the crop is not to be harvested.

Response: FCIC recognizes that 3 days is a short time frame. However, FCIC wants to provide the insured with the maximum amount of time to determine whether the crop can be harvested while still providing time for the insurance provider to conduct an appraisal. This requirement is consistent with other perennial crop insurance policies. Therefore, no change has been made.

Comment: The peach councils recommended changes to section 10(c) by deleting the phrases ''at least 15 days prior to the beginning of harvest'' and ''you must not sell or dispose of the damaged crop until after we have given written consent to do so.'' The inherent nature of farming, weather, and marketing suggest that a notice one-half month (15 days) prior to beginning of harvest is unreasonable. Numerous examples can be raised to demonstrate the potential problems with this provision. If notice of damage has been previously given as required, then the insurance provider should accept at least a portion of the responsibility in managing the potential claim. Nullification of coverage for failure to meet this requirement is far too severe.

Response: Initial reports of damage often do not result in a loss because the damage was not severe enough. The insured is best able to assess the conditions of the crop as it matures because he or she observes it. The insurance providers responsibility is to appraise the loss once it has been determined that a loss is likely. Under the insurance policy, the burden is on the insured to prove that a loss occurred as a result of an insured cause of loss. FCIC will not shift the burden to the insurance provider. Therefore, no change has been made.

Comment: The peach council recommended a new section 10(d) that states ''in addition to our responsibilities outlined in the Basic Provisions, we will assume responsibilities for inspection requirements outlined in this section, following the initial notification by you that a crop may be damaged.''

Response: The insurance provider does not have the day to day contact with the crop that the producer does to identify when losses have manifested themselves. It would place an undue burden on the insurance provider to take this responsibility. Therefore, no change has been made.

Comment: The peach councils recommended the language in section 11(b) be modified to be consistent with the current policy. The current policy specifies multiplying the total production to be counted by the actual price per bushel or by the price election, whichever is larger.

Response: This change was made so that the same price is used to establish liability and the amount of loss. FCIC is no longer offering revenue insurance on peaches because it is currently not authorized under the Federal Crop Insurance Act, as amended, except on a pilot basis. Therefore, no change has been made.

Comment: The peach councils recommended deleting the reference relating to direct marketing from section 11(c)(1)(i)(B).

Response: FCIC will insure direct marketed peaches, so the requirement in section 10 must be addressed in determining the total production to count. Therefore, no change has been made.

Comment: The peach council recommended deleting the last sentence in section 11(a) which reads, ''In the event you are unable to provide separate acceptable production records: * * *.''

Response: Maintaining separate records is a condition of receiving optional units. If production records for optional units are not kept separate, it would be impossible to accurately determine production to count for each unit. Therefore, no change has been made.

Comment: The peach council recommended changing 11(a)(1) to read: For any optional unit, we will combine all optional units for which ''timely notice was not reported or representative samples for appraisals are not available.''

Response: Neither timely notices nor representative samples for appraisals are a requirement for optional units. Units are combined when a producer fails to maintain separate production records. Therefore, no change has been made.

Comment: The peach council recommended that FCIC delete 11(a)(2) which reads ''For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.''

Response: If production is commingled it is impossible to accurately establish the amount of production attributed to each unit. Allocation in proportion to our liability for the harvested acres in units is a fair and equitable process. The alternative is to deny liability due to failure to follow policy provisions. Therefore, no change has been made.

Comment: The peach councils recommended that sections 11(b)(1), (2), (3), (4), (5), (6), and (7) be replaced by: ''11(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiply the insured acreage of peaches on the farm unit by the applicable production guarantee per acre which product will be the production guarantee for the farm unit;

(2) Subtract therefrom the total production of peaches to be counted for the farm unit;

(3) Multiply the remainder by the applicable price election for computing indemnities; and

(4) Multiply the result obtained in step (3) by the insured's share.

Response: The abbreviated formula is not correct when both fresh and processing peaches are insured within the same unit. When applicable, separate prices must be used to establish the amount of liability and the value of the production to count. Therefore, no change has been made.

Comment: The peach councils recommended deleting in the proposed provisions, references to appraised production in sections 11(c)(1)(i)(B) and (D), 11(c)(1)(ii), (iii), and (iv), and 11(c)(2) and (3).

Response: The recommended changes would permit abuse of the insurance program in many ways. A producer could simply elect not to harvest the crop and if the references to appraised production were deleted, the producer would receive a zero production to count. The crop insurance program only insures against legitimate losses of production. To permit such a change would significantly increase the premium rates for all producers. Therefore, no change has been made.

Comment: The peach council proposed that two guidelines for production to count be added: ''(A) Peaches damaged by an insured cause of loss that fail to appraise ''2 inches'' and up in size will not be recorded as production to count; and (B) Upon inspection, peaches showing evidence of internal damage will not be recorded as production to count.''

Response: In some regions of the country, certain varieties of peaches which grade near ''2 inches'' in size are sold. Peaches that are less than ''2 inches'' in size due to an insurable cause of loss are eligible for quality adjustment that takes into consideration their reduced value. If this damage is from an insurable cause and results in unmarketability of the peaches, they are not included as production to count. Therefore, no change has been made.

Comment: The peach council recommended modifying section 11(c)(1) to read ''any appraisal we have made on insured acreage will be considered production to count.'' This recommendation would result in deleting the language ''unless such appraised production is exceeded by the actual harvested production.''

Response: Harvested production is the most accurate determination and will be used as production to count. Appraisals are, by necessity, an estimate of production. Therefore, no change has been made.

Comment: The peach councils recommended changing section 11(c)(1)(iv) to read: (1) potential production on insured acreage that you intended to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period ''and all crop adjustments'' for the acreage will end; and (2) add the statement ''In any regard, however, once you and we reach an agreement on appraised production, further activity or inactivity with the crop is immaterial.''

Response: When the insurance period ends the producer can do whatever the producer wishes with the crop. Therefore, no change has been made.

Comment: The peach council recommended revising section 11(c)(2) to read ''all production from the insurable acreage, unless the insurance period has ended due to a previous agreement between you and us.''

Response: Harvested production will be used as production to count. For any acreage that is not harvested by the end of the insurance period, the appraised production will be used as production to count. Once the insurance period has ended and the claim finalized, the producer can do whatever the producer wishes with the crop. Therefore, no change has been made.

Comment: The peach council recommended deleting section 11(c)(3). This provision permits mature marketable peach production to be reduced due to loss in quality as a result of an insured cause of loss.

Response: This provision allows quality adjustment on damaged production due to all insured causes of loss. The current policy only permits quality adjustment for damage due to hail, wind, and misshapen fruit. Therefore, no change has been made.

Comment: The peach councils recommended deleting section 11(c)(3)(i)(A) which allows for (FOB) peach prices in the absence of the Market News Service.

Response: The current policy does not specify the price to use when the Market News Service does not establish a price for peaches. The change to the definition of actual price per bushel rectifies this omission. Therefore, no change has been made.

Comment: The peach councils recommended deleting that part of section 11(c)(3)(i) which reads: ''peaches grown for fresh use by:'' and deleting subparagraph 11(c)(3)(ii) in its entirety.

Response: The county actuarial table provides for different price elections for fresh and processing peaches. For example: The price election for fresh peaches is $5.25 per bushel and processing peaches is $4.00 per bushel. While it is true that some fresh market varieties may be marketed as either fresh or processing, the true processing peaches do not make good fresh market peaches. Also the Market News Service only quotes prices for fresh peaches that are packed and shipped. Therefore, no change has been made.

Comment: The peach council suggested adding a section 11(c)(5) ''Economic Zero or Threshold Yield.'' This section would contain language to allow an appropriate level in which production is not economically feasible to maintain and therefore should be zero in production to count.

Response: The crop insurance program only protects against loss of yield or crop damage due to insured causes. It does not ensure a profit. Therefore, no change has been made.

Comment: The peach councils suggested adding language to section 11(c)(6) to state ''Peaches damaged by an insured cause of loss that failed to appraise ''2 inch'' and up in size will not be recorded as production to count.''

Response: Peaches less than ''2 inch'' in size due to an insurable cause of loss may still have value if they are sold. Such production will be eligible for quality adjustment which is more equitable for the insurance provider and insured. Therefore, no change has been made.

Comment: One comment received from the peach council requested clarification of the written agreement in the summary. Specifically, an explanation of the phrase ''certain modifications allowed'' and the policies for which modifications are allowed was requested.

Response: Written agreements are designed to modify certain terms and conditions of the crop insurance policy. Each crop insurance policy specifies the provisions that may be modified by written agreement. For example, section 6(c) states that: ''We may agree in writing to insure peaches on acreage that has not reached the fourth growing season after being set out if it has produced at least 100 bushels of peaches per acre.

Comment: A reinsured company recommended that the requirement for a written agreement to be renewed each year should be removed in section 12. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are temporary and intended to address unusual situations. If the condition for written agreement remains from year to year, that condition should be

incorporated into the policy, the Special Provisions or the Actuarial Table. Therefore, no change has been made.

In addition to the changes described above, FCIC has made the following changes to the Peach Crop Provisions.

1. Section 1—Clarified the definition of ''actual price per bushel.''

2. Section 1—Added the definition of ''packing shed'' and ''set out'' for clarification.

3. Section 2(e)(1)—Clarified that the insured must provide records not later than the production reporting date of acreage and production for each optional unit for at least the last crop year used to determine the production guarantee.

4. Section 3(a)—Clarified that the insured may select one price election for each peach type ''fresh or processing.''

5. Section 3(b)(4)(i)—Clarified that for the first year of insurance, the insured must report the age of any perennial crop interplanted with peaches.

6. Section 9—Added wildlife as an insurable cause of loss to be consistent with other perennial crop insurance policies. Clarified that peaches are insured for the same causes of loss as other crops. Disease and insect infestation are insured causes of loss, if due to natural causes beyond the control of the producer. The former limitation that ''adverse weather'' be the sole cause factor no longer is necessary.

7. Section 11(c)(3)(ii)(A)—Clarified that the production to count for damaged peaches grown for processing is calculated by dividing the value of the damaged peaches by the actual price of undamaged peaches for processing.

List of Subjects in 7 CFR Parts 403 and 457

Crop Insurance, Peach crop.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation, hereby amends 7 CFR parts 403 and 457, as follows:

PART 403—GENERAL CROP INSURANCE REGULATION

1. The authority citation for 7 CFR part 403 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading ''Subpart-Regulations for the 1986 and Succeeding Crop Years'' is removed.

4. Section 403.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 403.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.34, 400.38). The provisions of the Peach Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

6. Section 457.153 is added to read as follows:

§ 457.153 Peach crop insurance provisions.

The Peach Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Peach Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), the Crop Provisions, the Special Provisions, and the Catastrophic Risk Protection Endorsement, if applicable, the Special Provisions will control the Crop Provisions and these Basic Provisions; the Crop Provisions will control the Basic Provisions; and the Catastrophic Risk Protection Endorsement, if applicable, will control all provisions.

1. Definitions

Actual price per bushel for:

(a) Fresh peaches means the average price per bushel of U.S. Extra No. 1 ''2-inch'' peaches (if not available, the next larger size for which a price is available) determined from applicable prices reported by the Market News Service of the United States Department of Agriculture for seven consecutive marketing days, commencing with the day harvest of the variety begins. In the absence of FOB shipping point price from the Market News Service, the price per bushel of U.S. Extra No. 1 ''2-inch'' peaches will be the total of the price election and allowable costs for the undamaged peaches; and

(b) Processing peaches means the average price per bushel received from the processor for that applicable variety determined for seven consecutive marketing days, commencing with the day harvest of the variety begins.

Bearing tree. A tree in at least the 4th growing season after set out.

Bushel. Fifty pounds of ungraded peaches.

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, or permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The picking or removal of mature peaches from the trees either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Loss in quality. When the crop is damaged to the extent that the producer does not receive the average price for U.S. Extra No. 1 peach.

Packing shed. A facility at which peaches are graded, packed and cooled in preparation for shipment to a wholesale market.

Production guarantee (per acre). The number of peaches (bushels) determined by multiplying the approved actual production history (APH) yield per acre by the coverage level percentage you elect.

Set out. Transplanting the tree into the orchard.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records not later than the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* Optional units may be based on irrigated acreage and non-irrigated acreage (in those counties where ''non-irrigated'' practice is allowed in the actuarial table) if both are located in the same section, section equivalent, or FSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the peaches in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each peach type (fresh or processing) designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for all other types.

(b) You must report, not later than the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type if applicable:

(1) Any damage, removal of or addition of trees, or change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing and non-bearing trees on insurable and uninsurable acreage;

(3) The age of the trees, variety, type, and the planting pattern; and

(4) For the first year of insurance, acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the crop that is interplanted with the peaches;

(ii) The variety, and type if applicable;

(iii) The planting pattern; and

(iv) Any other reasonable and pertinent information that we request in order to establish your approved yield.

We will adjust the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop; removal or addition of trees or varieties of trees; physical or structural tree damage; a change in practices or changes in tree population and density, and any other circumstance affecting the yield potential of the insured crop. If you fail to notify us of any circumstance that may affect your yields from previous levels, we will adjust your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the peaches in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are a variety having a chilling hour requirement that is appropriate for the area;

(3) Are grown on a root stock that is adapted to the area.

(c) That the crop insured will be any of the types or varieties of peaches that are grown for the production of Fresh or Processing Peaches (except Processing Peaches excluded in California) on insured acreage and for which a guarantee and premium rate are provided by the Actuarial Table.

(d) That are grown in an orchard that, if inspected, is considered acceptable by us; and

(e) That has reached at least the fourth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 100 bushels of peaches per acre.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, peaches interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is September 30.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any acreage of peaches on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Insects, but not damage due to insufficient or improper application of pest control measures;

(5) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(6) Volcanic eruption;

(7) Wildlife, unless control measures have not been taken;

(8) An insufficient number of chilling hours to effectively break dormancy; or

(9) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Split pits, regardless of cause; or

(2) Inability to market the peaches for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), and unless the insurance period has ended prior to each of the following events, the following will apply:

(a) You must notify us within three days of the date that harvest of the damaged variety should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the direct market peaches were ''weighed and graded'' through a packing shed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), and if you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest of the damaged variety, so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so.

(d) If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see subsection 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the total in section 11(b)(5) from the total in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production will be determined as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) From which production is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(v) Any appraised production on insured acreage will be considered production to count unless such production is exceeded by the actual harvested production.

(2) All harvested production from the insurable acreage.

(3) Mature marketable peach production may be reduced as a result of a loss in quality due to an insured cause of loss. The amount of production to count for such peaches will be determined as follows:

(i) Peaches grown for fresh use by:

(A) Dividing the value of the damaged peaches by the actual price for undamaged peaches; and

(B) Multiplying the result of section 11(c)(3)(i)(A) by the number of bushels of the eligible damaged peaches.

(ii) Peaches grown for processing by:

(A) Dividing the value of the damaged peaches by the actual price of undamaged peaches for processing; and

(B) Multiplying the result of section 11(c)(3)(ii)(A) by the number of bushels of the eligible damaged peaches.

(4) Peaches that cannot be marketed due to insurable causes will not be considered production to count.

12. Written Agreements

Terms of this policy which are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is

determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on July 21, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–19631 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 301

[INS No. 1736–95]

RIN 1115–AE19

Acquisition of Citizenship; Equal Treatment of Women in Conferring Citizenship on Children Born Abroad

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934. The purpose of this rule is to ensure that all women receive equal treatment under laws relating to nationality. This rule allows for the issuance of certificates of citizenship to certain foreign-born children previously ineligible to acquire citizenship from United States citizen mothers.

DATES: This rule is effective August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Jane B. Barker, Adjudications Officer, Benefits Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 5, 1996, at 61 FR 35111, the Immigration and Naturalization Service published an interim rule with request for comments to amend Service regulations by adding a new part 301. This was necessary to implement section 101(a)(2) of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103–416, which amended the Immigration and Nationality Act (Act) by adding new section 301(h). Section 301(h) permits certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934. Persons qualifying for citizenship under section 301(h) are considered citizens of the United States from birth and are not subject to any provisions of law that provided for loss of citizenship or nationality (including section 301(b) of the Act (as in effect before October 10, 1978) and the provisions of section 201(g) of the Nationality Act of 1940) if they failed to come to, reside, or be physically present in the United States. Section 301(h) also provides that for purposes of transmission of citizenship, any person who acquires United States citizenship under section 301(h) must meet applicable residence/physical presence requirements in order to transmit citizenship to their children born abroad. Finally section 301(h) has no effect on the validity of the citizenship of anyone who obtained United States citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934, 48 Stat. 797) and does not confer citizenship, nor have any effect on the validity of any denaturalization, deportation, or exclusion action against any person who is or was excludable from the United States for participation in Nazi persecution or genocide, or who was excluded from, or who would not have been eligible for admission to the United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.

The interim rule outlined the application procedures and specific documentary requirements that applicants must satisfy in order to establish their claim to citizenship under 8 CFR part 301. The interim rule also provided procedures for processing such applications within the United States and abroad.

On August 27, 1996, at 61 FR 43948, the Service published a correction to the interim rule removing the requirement to take the oath of allegiance before any diplomatic or consular officer of the United States, since the Department of State does not require the oath of allegiance in connection with its adjudication of passport applications and issuance of passports.

Interested parties were invited to submit written comments to the interim rule by September 3, 1996.

Discussion of Comments on Interim Rule

Two commenters were concerned that the wording of the interim rule implies that the person is not a United States citizen prior to the approval of the application for a Certificate of Citizenship (Form N–600), which is contrary to section 301 of the Act which states that ''The following shall be nationals and citizens of the United States at birth.'' The Service notes this error and has amended § 301.1 accordingly.

One commenter noted that the word ''adoption'' should be deleted in reference to the supporting documentation mentioned in 8 CFR 301.1(a) because section 301(h) does not include adopted children and only covers natural-born children. The Services agrees and has removed the word ''adoption'' from § 301.1(a)(1).

One commenter noted that a person residing in the United States who is a United States citizen pursuant to section 301(h) is also able to document his or her citizenship by applying for a United States passport in addition to or in place of applying for a Certificate of Citizenship with the Service. The Service agrees and has amended § 301.1(a) to reflect this option.

One commenter noted that 8 CFR 301.1(b)(2) is redundant and should be removed. The Service agrees that, after the corrections to this section were made on August 27, 1996, paragraph (b)(2) became duplicative. Accordingly, the Service has removed paragraph (b)(2) in the final rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic effect on a substantial number of small entities because of the following factors. This rule provides procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before May 24, 1934. The affected parties are not small entities, and the effect of the regulation is not an economic one.

Executive Order 12866

This rule is not considered by the Department of Justice, immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executrive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. The information collection (Form N–600) was previously cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB clearance number for this collection is 1115–0018.

List of Subjects in 8 CFR Part 301

Citizenship and naturalization.

Accordingly, the interim rule adding 8 CFR part 301 which was published at 61 FR 35111 on July 5, 1996, is adopted as a final rule with the following changes:

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

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

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

2. Section 301.1 is revised to read as follows:

§ 301.1 Procedures.

(a) *Application.* (1) A person residing in the United States who desires to be documented as a United States citizen pursuant to section 301(h) of the Act may apply for a passport at a United States passport agency or may submit an application on Form N–600, Application for Certificate of Citizenship, to the Service, as provided in 8 CFR part 341. Such application shall be filed with the Service office having jurisdiction over the applicant's place of residence, or with such other Service office as the Commissioner may designate. It must be accompanied by the fee specified in 8 CFR 103.7(b)(1). The application also must be accompanied by supporting documentary and other evidence essential to establish the claimed citizenship, such as birth, marriage, death, and divorce certificates. The applicant will be notified in writing when and where to appear before a Service officer for examination of his or her application.

(2) A person residing outside of the United States who desires to be documented as a United States citizen under section 301(h) of the Act shall make his or her claim at a United States embassy or consulate, in accordance with such regulations as may be prescribed in the Secretary of State.

(b) *Oath of allegiance; issuance of certificate.* Upon determination by the district director that a person is a United States citizen pursuant to section 301(h) of the Act, the person shall take the oath of allegiance, prescribed in 8 CFR part 337, before an officer of the Service designated to administer the oath of allegiance within the United States, and a certificate of citizenship shall be issued. The person shall be considered a United States citizen as of the date of his or her birth.

Dated: June 10, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–19586 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–60–AD; Amendment 39–10087; AD 97–15–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). This action requires installing lubrication fittings in the airstair door handle and latch housing mechanisms. The AD results from reports of the airstair door not opening because the door was frozen shut. The actions specified by this AD are intended to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

DATES: Effective September 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 5, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models 1900, 1900C, and 1900D airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 29, 1997 (62 FR 4206). The NPRM proposed to require installing lubrication fittings in the airstair door handle and latch housing mechanisms. Accomplishment of the proposed installation as specified in the NPRM would be in accordance with Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

The NPRM resulted from reports of the airstair door not opening because the door was frozen shut.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 408 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 14 workhours per airplane to accomplish the required installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $363,120 or $890 per airplane. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required installation.

Raytheon has informed the FAA that parts have been distributed to equip approximately 36 of the affected airplanes. Presuming that each set of parts has been incorporated on one of the affected airplanes, the cost impact of this AD upon U.S. operators of the affected airplanes is reduced $32,040 from $363,120 to $331,080.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–15–13 Raytheon Aircraft Company (formerly Beech Aircraft Corporation): Amendment 39–10087; Docket No. 96–CE–60–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial numbers
1900	UA–1 through UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900D	UE–1 through UE–157.
1900D (C–12J)	UD–1 through UD–6.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation, accomplish the following:

(a) Install lubrication fittings in the airstair door handle and latch housing mechanisms in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

NOTE 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The installation required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10087) becomes effective on September 5, 1997.

Issued in Kansas City, Missouri, on July 16, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19438 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–34]

Revision of Class D Airspace; Dallas Addison Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class D airspace at Addison Airport, Dallas, TX. As a result of the Class B airspace changes for Dallas/Fort Worth International Airport, the Class D airspace at Addison Airport is no longer sufficient to contain departing aircraft within controlled airspace. This action is intended to expand the Class D airspace to provide adequate airspace to contain aircraft operating under Instrument Flight Rules (IFR) at Addison Airport, Dallas, TX.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23643). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Forth Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19679 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–02]

Revision of Class D Airspace; Little Rock, AFB, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class D airspace at Little Rock Air Force Base (AFB), AR. The development of a Precision Approach Radar (PAR) and a Tactical Air Navigation (TACAN) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) of 07 at the airport has made this rule necessary. This action is intended to provide adequate Class D airspace for aircraft operating under Instrument Flight Rules (IFR) and executing the PAR or TACAN SIAP at Little Rock AFB, AR.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23644). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19688 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–35]

Revision of Class E Airspace; Killeen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Robert Gray Army Airfield, Killeen, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 33 and a new VHF Omnidirectional Range Distance Measuring Equipment (VOR/DME) SIAP to RWY 15 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the GPS SIAP to RWY 33 and the VOR/DME SIAP to RWY 15 at Robert Gray Army Airfield, Killeen, TX.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193-0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23654). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19680 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–36]

Revision of Class E Airspace; Weslaco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Mid Valley Airport, Weslaco, TX. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 has made this rule necessary. This action is intended to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 13 to contain Instrument Flight Rules (IFR) operations at Mid Valley Airport, Weslaco, TX.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23653). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19681 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–37]

Revision of Class E Airspace; De Queen, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at J. Lynn Helms Sevier County Airport, De Queen, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 08 has made this rule necessary. This action is intended to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 08 and to contain Instrument Flight Rules (IFR) operations at J. Lynn Helms Sevier County Airport, De Queen, AR.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23651). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19682 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–41]

Establishment of Class E Airspace; Grants, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action establishes Class E airspace at Grants-Milan Municipal Airport, Grants, NM. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 had made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the GPS SIAP to RWY 31 at Grants-Milan Municipal Airport, Grants, NM.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23649). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Forth Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19683 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–39]

Revision of Class E Airspace; Paragould, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Kirk Field, Paragould, AR. A new Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 04, and a new NDB SIAP to RWY 22 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB SIAP to RWY 22 and the NDB SIAP to RWY 04 at Kirk Field, Paragould, AR.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23648). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19684 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–38]

Revision of Class E Airspace; Reserve, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Saint John The Baptist Parish Airport, Reserve, LA. A new VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 35 has made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the VOR SIAP to RWY 35 at Saint John The Baptist Parish Airport, Reserve, LA.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23652). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19685 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–42]

Revision of Class E Airspace; Olney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Olney Municipal Airport, Olney, TX. New Nondirectional Beacon (NDB) and Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 17 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB and GPS SIAP to RWY 17 at Olney Municipal Airport, Olney, TX.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23647). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19686 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–43]

Revision of Class E Airspace; Clarksville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action revises the Class E airspace at Clarksville Municipal Airport, Clarksville, AR. New Nondirectional Beacon (NDB) and Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) to Runway (RWY) 09 and RWY 27 have made this rule necessary. This action is intended to provide adequate Class E airspace to contain Instrument Flight Rules (IFR) operations for aircraft executing the NDB or GPS SIAPs to RWY 09 or RWY 27 at Clarksville Municipal Airport, Clarksville, AR.

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 1, 1997 (62 FR 23646). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 11, 1997. No adverse comments were received, and thus this action confirms that this final rule will be effective on that date.

Issued in Fort Worth, TX, on July 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–19687 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–8]

Establishment of Class E Airspace; Perham, MN, Perham Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Perham, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 30 has been developed for Perham Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 13, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Perham, MN (62 FR 26265). The proposal would add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Perham, MN, to accommodate aircraft executing the GPS Runway 30 SIAP at Perham Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Perham, MN [New]

Perham Municipal Airport, MN
(lat. 46°36′15″ N., long., 95°36′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Perham Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on July 10, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19692 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–10]

Establishment of Class E Airspace; Harvey, ND, Harvey Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Harvey, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 11 and a GPS SIAP to Runway 29 has been developed for Harvey Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 13, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Harvey, ND (62 FR 26264). The proposal would add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Harvey, ND, to accommodate aircraft executing the GPS Runway 11 SIAP and the GPS Runway 29 SIAP at Harvey Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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. Therefore, this regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Harvey, ND [New]

Harvey Municipal Airport, ND
(lat. 47°47′28″N., long 99°55′54″W.)
Minot AFB, ND
(lat. 48°24′56″N., long. 101°21′28″W.)
Bismarck VOR/DME
(lat. 46°45′42″N., long. 100°39′55″W.)
Devils Lake VOR/DME
(lat. 48°06′47″N., long. 98°54′29″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Harvey Municipal Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the north by V430, on the west by the 47-mile radius of Minot Air Force Base, on the southwest by V15, on the south by the Bismarck VOR/DME 36-mile radius, on the southeast by V169, and on the east by the Devils Lake VOR/DME 22-mile radius, and that airspace extending upward from 1,200 feet above the surface bounded on the northwest by V169, on the south by latitude 47°30′00″N., and on the east by longitude 99°19′00″W, excluding all Federal airways.

* * * * *

Issued in Des Plaines, Illinois on July 10, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19693 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 430

RIN 0960–AE52

Personnel

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: These final rules adopt regulations for SSA which contain the same policy as provided by current regulations of the U.S. Department of Health and Human Services (HHS) on indemnification of employees for judgments, verdicts or monetary awards. The Social Security Independence and Program Improvements Act (SSIPIA) of 1994 established the Social Security Administration as an independent agency in the executive branch of the United States Government effective March 31, 1995 and vested general regulatory authority in the

Commissioner of Social Security. These regulations establish a new part 430 in Title 20 of the Code of Federal Regulations.

EFFECTIVE DATE: These rules are effective July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Prior to March 31, 1995, SSA was an operating component of HHS and the general regulatory authority for SSA programs and administration was vested in the Secretary of Health and Human Services (the Secretary) based on section 1102 of the Social Security Act (the Act)(42 U.S.C. 1302). The SSIPIA established SSA as an independent agency in the Executive Branch of the Federal government effective March 31, 1995 and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under Section 106(b) of SSIPIA, HHS regulations in effect immediately prior to March 31, 1995 which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated or repealed by the Commissioner. SSA continues to administer the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI.

These final rules adopt the same policy set out in 45 CFR part 36 that was applicable to SSA when it was a component of HHS, and that has continued to remain applicable to SSA since its independence pursuant to section 106(b) of SSIPIA. The rules at 45 CFR part 36, entitled, Indemnification of HHS Employees, permit the indemnification of an employee for a verdict, judgment or other monetary award when the conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment.

All changes from the HHS regulation are technical in nature and pertain to names, addresses, legal citations and paragraph designations. References contained in the HHS regulation to ''HHS'', ''the Department'' or ''the Secretary'' have been changed to ''the Social Security Administration'' or ''the Commissioner'', as appropriate. The HHS regulation at 45 CFR part 36 will cease to have effect on SSA at the moment these rules become effective.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect.

Regulatory Procedures

Justification for Final Rules

This rule is being published as a final rule instead of as a proposed rule. Section 702(a)(5) of the Social Security Act (Act) makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. These procedures generally require publication of notice of the proposed rulemaking and the solicitation of comments from interested persons. However, the APA provides exceptions to notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

After due consideration, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking because such procedure would be unnecessary. This final regulation adopts as an SSA regulation the provisions of 45 CFR part 36 without substantive change. Those provisions have remained applicable to the indemnification of SSA employees after the date SSA gained the status of an independent agency, pursuant to section 106(b) of Public Law 103–296. The differences in this regulation over that of 45 CFR part 36 are of form only and are necessary to adapt the former regulation to the operating structures of this agency. Accordingly, promulgation of this regulation pursuant to notice and comment rulemaking is unnecessary and may be dispensed with pursuant to 5 U.S.C. 553(b)(B).

Waiver of 30-Day Delay in Effective Date

This regulation is effective on publication, rather than effective 30 days after publication. As indicated above, section 702(a)(5) of the Act makes the regulations we prescribe subject to the rulemaking procedures established under section 553 of the APA.

Section 553(d) of the APA requires that the effective date of a substantive rule be no less than 30 days after its publication, except in cases of: Rules which grant or recognize an exemption or relieve a restriction; interpretative rules and statements of policy; or as otherwise provided by the agency for good cause found and published with the rule.

Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the minimum 30 day period between publication date and effective date. As indicated above, this regulation adopts without change the substantive provisions of 45 CFR part 36.

Pursuant to section 106(b) of Public Law 103–296, the provisions of part 36 remain applicable to SSA until such time as this regulation becomes effective. A 30-day delay in the effective date of this regulation would serve no purpose since during such delay, the identical provisions of part 36 would remain applicable. Accordingly, this regulation is effective on publication.

Executive Order 12866

SSA has consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

SSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities since it makes no changes in policy. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income; 96.007 Social Security—Research and Demonstration)

List of Subjects in 20 CFR Part 430

Claims, Government employees.

Dated: July 14, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For reasons set out in the preamble, Chapter III of Title 20 of the Code of Federal Regulations is amended by adding the following:

PART 430—PERSONNEL

Authority: Section 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5))

Indemnification of SSA Employees

§ 430.101 Policy.

(a) The Social Security Administration (SSA) may indemnify, in whole or in part, its employees (which for the purpose of this regulation includes former employees) for any verdict, judgment or other monetary award which is rendered against any such employee, provided that the conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with SSA and that such indemnification is in the interest of the United States, as determined by the Commissioner, or his or her designee, in his or her discretion.

(b) SSA may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Commissioner, or his or her designee, in his or her discretion.

(c) Absent exceptional circumstances, as determined by the Commissioner or his or her designee, SSA will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee of SSA becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify SSA that such an action is pending.

(e) The employee may, thereafter, request either:

(1) Indemnification to satisfy a verdict, judgment or award entered against the employee; or

(2) Payment to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with documentation including copies of the verdict, judgment, award or settlement proposal, as appropriate, to the Deputy Commissioner or other designated official, who shall thereupon submit to the General Counsel, in a timely manner, a recommended disposition of the request. The General Counsel shall also seek the views of the Department of Justice. The General Counsel shall forward the request, the Deputy Commissioner's or other designated official's recommended disposition, and the General Counsel's recommendation to the Commissioner or his or her designee for decision.

(f) Any payment under this section either to indemnify an SSA employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds.

[FR Doc. 97–19478 Filed 7–24–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 96F–0384]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of epichlorohydrin-dipropylene glycol and epichlorohydrin-polypropylene glycol as reactants in the preparation of epoxy-based resins used as adhesives for articles or components of articles intended for use in food-contact applications. This action is in response to a petition filed by the Dow Chemical Co.

DATES: Effective July 25, 1997; written objections and requests for a hearing by August 25, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 22, 1996 (61 FR 54801), FDA announced that a food additive petition (FAP 6B4523) had been filed by the Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of epichlorohydrin-dipropylene glycol and epichlorohydrin-polypropylene glycol as reactants in the preparation of epoxy-based resins used as adhesives for articles or components of articles intended for use in food-contact applications.

In FDA's evaluation of the safety of this additive, the agency reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted propylene oxide and epichlorohydrin, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as propylene oxide and epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the so-called ''general safety clause'' of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 348(c)(3)(A), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

II. Safety of The Petitioned Use of The Additive

FDA estimates that the petitioned use of the additives, reaction products of epichlorohydrin-dipropylene glycol and epichlorohydrin-polypropylene glycol, will result in exposure to the additive of no greater than 7 parts per billion in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such

low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by propylene oxide and epichlorohydrin, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of propylene oxide and epichlorohydrin has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. Propylene Oxide

FDA has estimated the exposure to polypropylene oxide from the petitioned use of each of the two additives in the manufacture of adhesives to be 0.7 parts per quadrillion (ppq) of the daily diet or 2.1 picogram (pg)/person/day or a total of 4.2 pg/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on propylene oxide, conducted for the Institute of Hygiene, University of Mainz, Germany (Ref. 3), to estimate the upper-bound lifetime human risk from exposure to this chemical stemming from the petitioned use of the additive. The results of the bioassay on propylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused carcinomas and papillomas in the squamous epithelium of the forestomach.

Based on the estimated worst-case exposure to propylene oxide of 4.2 pg/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the use of the subject additives is in the range of 6.5×10^{-13} (or 6.5 in 10 trillion) to 2.9×10^{-12} (or 2.9 in 1 trillion) (Ref. 4). FDA's estimate of the upper-bound limit of individual lifetime risk has been stated as a range because the agency evaluated complex tumor data in an oral toxicity study using rats. Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to propylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to propylene oxide would result from the petitioned use of the additives.

B. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of each of the two additives in the manufacture of adhesives to be 0.7 ppq of the daily diet (3 kg), or 2.1 pg/person/day or a total of 4.2 pg/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay conducted in Japan on epichlorohydrin fed to rats via their drinking water (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additives. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 4.2 pg/person/day, FDA estimates that the upper-bound limit of individual lifetime human risk from the use of the subject additives is 1.9×10^{-13} (or 1.9 in 10 trillion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to epichlorohydrin would be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to epichlorohydrin would result from the petitioned use of the additives.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of propylene oxide and epichlorohydrin as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which propylene oxide and epichlorohydrin may be expected to remain as impurities following production of the additives, the agency would not expect the impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to propylene oxide and epichlorohydrin, even under worst-case assumptions, is very low, in the range of less than 6.5 in 10 trillion to 2.9 in 1 trillion for propylene oxide and 1.9 in 10 trillion for epichlorohydrin.

III. Conclusion

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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. No comments were received during the 30 day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 25, 1997, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in

support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team, FDA, to the file concerning ''FAP 6B4523 (MATS #887, M2.0 & 2.1): Dow Chemical Co., dated September 18, 1996. Epichlorohydrin-dipropylene Glycol and Epichlorohydrin-polypropylene Glycol as Reactants in the Preparation of Epoxy Resins Used in Adhesives,'' dated October 29, 1996.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance,* edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., ''Carcinogenicity of Ethylene Oxide and 1,2–Propylene Oxide Upon Intragastric Administration to Rats,'' *British Journal of Cancer,* 46: pp. 924–933, 1982.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning ''Estimation of Upper-bound Lifetime Risk from Propylene Oxide and Epichlorohydrin Epoxy Resins Employed as Reactants in the Preparation of Epoxy Resins Used in Adhesives: Subject of Food Additive Petition No. 6B4523 (Dow Chemical Company),'' dated November 12, 1996.

5. Konishi, Y. et al., ''Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats,'' *Gann,* 71: pp. 922–923, 1980.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding new entries under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * * *
α-(oxiranylmethyl)-ω-(oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], (alternative name: epichlorohydrin-polypropylene glycol) (CAS Reg. No. 26142–30–3).	For use as a reactant in the preparation of epoxy-based resins.
2,2'-[oxybis[(methyl-2,1-ethanediyl)-oxymethylene]]bisoxirane, (alternative name: epichlorohydrin-dipropylene glycol) (CAS Reg. No. 41638–13–5).	For use as a reactant in the preparation of epoxy-based resins.
* * *	* * * *

Dated: July 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–19567 Filed 7-24-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 96F–0291]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 12-hydroxystearic acid-polyethylene glycol (minimum MW 200) block copolymer as a surfactant in the manufacture of paper and paperboard intended for use in contact with food. This action is in response to a petition filed by ICI Americas, Inc.

DATES: Effective July 25, 1997; written objections and requests for a hearing by August 25, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 26, 1996 (61 FR 43772), FDA announced that a food additive petition (FAP 6B4519) had been filed by ICI Americas, Inc., 3411 Silverside Rd., Wilmington, DE 19850. The petition proposed to amend the food additive regulations in § 176.170 Components of paper and paperboard in contact with aqueous and fatty foods (21 CFR 176.170) to provide for the safe use of 12-hydroxystearic acid-polyethylene glycol (minimum MW 200) block copolymer as a surfactant in the manufacture of paper and paperboard intended for use in contact with food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities resulting from

the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer or Delaney clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, 12-hydroxystearic acid-polyethylene glycol (minimum MW 200) block copolymer as a surfactant in the manufacture of paper and paperboard will result in exposure to the additive of no greater than 15 parts per billion in the daily diet (3 kilogram (kg)) or an estimated daily intake of 45 microgram per person per day (ug/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the petitioned use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by 1,4-dioxane and ethylene oxide, the carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the exposure to the impurities from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

A. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of paper and paperboard to be 1.5 parts per quadrillion (pp quad) of the daily diet (3 kg) or 4.5 picogram (pg)/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound lifetime human risk from exposure to this chemical stemming from the petitioned use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused a significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 4.5 pg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the use of the subject additives is 1.6×10^{-13} (or 1.6 in 10 trillion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the petitioned use of the additive.

B. Ethylene oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive in the manufacture of paper and paperboard to be 1.5 pp quad of the daily diet (3 kg) or 4.5 pg/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on ethylene oxide demonstrated that ethylene oxide was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that the exposure to ethylene oxide will not exceed 4.5 pg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the petitioned use of the subject additives is 8.4×10^{-12} (or 8.4 in 1 trillion)) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the petitioned use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additives, the agency would not expect the impurities to become components of food at other than an extremely small level; and (2) the upper-bound limits of lifetime risk from exposure to 1,4-dioxane and ethylene oxide, even under worst-case assumptions, is very low, 1.6 in 10 trillion and 8.4 in 1 trillion, respectively.

III. Conclusion

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment

with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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. No comments were received during the 30 day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

V. Objections

Any person who will be adversely affected by this regulation may at anytime on or before August 25, 1997 file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Team, FDA, to the file concerning ''FAP 6B4519 (MATS #882, M2.0 & 2.1): ICI Americas Inc., dated July 23, 1996. Use of 12-hydroxystearic acid-propylene glycol (MW 200) Block Copolymer as an Adjuvant in the Manufacture of Paper and Paperboard,'' dated August 20, 1996.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. ''Bioassay of 1,4-Dioxane for Possible Carcinogenicity,'' National Cancer Institute, NCI-CG-TR-80, 1978.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning ''Estimation of Upper-bound Lifetime Risk from Ethylene Oxide and 1,4-dioxane in 12-hydroxystearic acid-polyethylene glycol (MW 200) Block Copolymer as an Adjuvant in the Manufacture of Paper and Paperboard: Subject of Food Additive Petition No. 6B4519 (ICI Americas Inc.),'' dated March 3, 1996.

5. Dunkelberg, H., ''Carcinogenicity of Ethylene Oxide and 1,2-propylene Oxide Upon Intrgastric Administration to Rats,'' *British Journal of Cancer*, 46: pp. 924–933, 1982.

List of Subjects in 21 CFR Part 175

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for ''12-Hydroxystearic acid-polyethylene glycol block copolymers (CAS Reg. No. 70142–34–6)'' to read as follows:

§176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * *	* * * *
12-Hydroxystearic acid-polyethylene glycol block copolymers (CAS Reg. No. 70142–34–6) produced by the reaction of polyethylene glycol (minimum molecular weight 200) with 12-hydroxystearic acid.	For use only as a surfactant for dispersions of polyacrylamide retention and drainage aids employed prior to the sheet forming operation in the manufacture of paper and paperboard.
* * *	* * * *

* * * * *

Dated: July 17, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–19568 Filed 7-24-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA36

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Extension of the Active Duty Dependents Dental Plan to Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements recently enacted statutory authority for the extension of the Active Duty Dependents Dental Plan to overseas areas. It provides for adjustments in the program in overseas areas. This rule details the implementation and operation of the program which will ensure access to dental care for family members accompanying their active sponsors while overseas.

DATES: This interim final rule is effective August 25, 1997. Comments may be submitted on or before September 23, 1997.

ADDRESSES: Forward comments to TRICARE Support Office (TSO)/Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development; Aurora, Colorado 80045–6900.

FOR FURTHER INFORMATION CONTACT: Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695–3331.

SUPPLEMENTARY INFORMATION:

1. Overview of the Interim Final Rule

Military force reductions in Europe, the Middle East, and the Pacific have resulted in diminished medical services for many areas, particularly those where the active duty end strengths have fallen below levels which would support a military medical facility. Service members and their families, particularly those in remote areas, have experienced significant access problems in obtaining dental services at military facilities. This rule is based on section 703 of the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337, which amended 10 U.S.C. 1076a. This law allows the Department to extend the Dependent's Dental Plan to overseas areas. Family members enrolled in the Dependent's Dental Plan will be allowed to receive dental care from host nation providers and have the dental claims processed by a dental contractor. Host nation providers who meet accepted dental practice standards will be identified by the local military dental treatment facility commander.

Enrolled family members overseas will be eligible to obtain the same basic dental benefits offered to enrollees in the Active Duty Dependents' Dental Plan (also referred to as the TRICARE Active Duty Family Member Dental Plan) in the Continental United States. The Continental United States is defined as the forty-eight contiguous states, as well as Alaska, Hawaii, Guam, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and Canada. Overseas is defined as those countries not previously mentioned.

This interim final rule will allow dental claims to be paid on a ''billed charge'' basis. In order to participate, beneficiaries must be enrolled in the Family Member Dental Plan (FMDP). In order to have care from host nation dentists reimbursed under the FMDP, beneficiaries will be requested to be referred by a military dental treatment facility (DTF). This referral will be contingent upon the lack of availability of the applicable dental services in the DTF. Beneficiaries will receive evidence of preauthorization. Family members residing with their active duty sponsor in remote locations where there are no DTFs will not be required to obtain a Nonavailability Statement (NAS) to receive care. Countries will be considered remote locations for the purpose of NAS's when the Department does not have a significant presence and no fixed dental treatment facilities. Family members in these countries may obtain care from any host nation provider meeting accepted U.S. standards. The dental claims processor, upon receiving a claim without an attached authorization, will review the claim to determine if it is from a family member in a remote location. Following this verification, the claim will be processed under the ODP benefit plan.

Basic dental care encompasses diagnostic and preventive (exams, x-rays, cleanings, etc), sealants (for children under age 14), restorative (fillings, crowns, etc), endodontics (root canals, etc.), periodontics (gum surgery, etc.), oral surgery (extractions, etc.), and prosthodontics (bridges, dentures, etc.). An annual cap (contract year—August 1 to July 31) of $1,000 is applicable to basic dental care. Orthodontics is available, subject to the lifetime maximum of $1,200 per member. In the event either of these maximum caps (annual dental or lifetime orthodontics) is insufficient to enable beneficiaries to obtain the required dental care, the responsible dental facility has the authority to issue a waiver on behalf of the beneficiary. This waiver review will be accomplished on a prospective basis, for dental care required due to extraordinary circumstances governing the cost of dental services in a particular geographic area.

All requests from DTFs to their Service Dental chiefs for waiver from the maximum caps will be handled in accordance with procedures established by the Service Dental Chiefs. Waiver requests should include the beneficiary's latest Explanation of Benefit (EOB) to indicate the beneficiary's current value of dental care applicable to the cap level; information on the proposed treatment; and information on the costs of dental care in the host nation compared to overall dental costs in the United States.

II. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (FRA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities, however, this rule has been reviewed by OMB.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

The Department is publishing this rule as an interim final rule in order to implement the program in a timely manner. Regulations involving military affairs are exempt from the notice and comment rulemaking procedures of the Administrative Procedures Act. Because this rule deals exclusively with a

program for active duty family members accompanying military personnel in overseas assignments, there is a heightened impact on the conduct of affairs peculiar to military functions of the government, and a significant reduced impact on the public. Based on this, it is appropriate, as an exception to our normal practice of providing an opportunity for prior public comment on all CHAMPUS regulations, to issue this rule as an interim final rule, with a subsequent opportunity for public comment. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the permanent final rule, anticipated approximately 90 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.13 is amended by adding paragraph (i) to read as follows:

§ 199.13 Active duty dependents dental plan.

* * * * *

(i) *Extension of the Active Duty Dependents' Dental Plan to areas outside the United States.* The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) may, under the authority of 10 U.S.C. 1076a(h), extend the Active Duty Dependents' Dental Plan to areas other than those areas specified in paragraph(a)(2)(i) of this section for the eligible dependents of members of the uniformed services accompanying the members on permanent assignment to duty in such areas. Action by the ASD(HA) to extend the program to any such area shall be announced through the publication of a notice in the **Federal Register**. In extending the program outside the United States, the ASD(HA) is authorized to establish program elements, methods of administration and payment rates to providers that are different from those in effect under this section in the United States to the extent the ASD(HA) determines necessary for the effective and efficient operation of the plan outside the United States. One such difference is that in areas other than those areas specified in paragraph (a)(2)(i) of this section, services under the active duty dependents' dental plan must be preauthorized by a designated DOD official, who may deny preauthorization if the needed services are available in a dental treatment facility of the Department of Defense. Other differences may occur based on limitations in the availability and capabilities of that nation's civilian sector providers in certain areas. Another difference is that a waiver of the annual maximum coverage amount for non-orthodontic dental benefits or the lifetime maximum coverage amount for orthodontics is authorized based on extraordinary circumstances governing the cost of dental services in a particular geographic area. Otherwise, rules pertaining to services covered under the plan, beneficiary cost sharing and quality of care standards for providers shall be comparable to those in effect under this section in the United States. In addition, all provisions of 10 U.S.C. 1076a shall remain in effect.

Dated: July 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–19559 Filed 7–24–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790–AG43

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Interim final rule.

SUMMARY: This part implements section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. This part establishes policy and procedures concerning the payments to these persons.

DATES: This rule is effective May 15, 1997. Comments are requested on or before September 23, 1997.

ADDRESSES: Forward comments to: Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C., 20301–4000.

FOR FURTHER INFORMATION CONTACT: Peter Ogloblin, or David Pronchick (703) 695–3176.

SUPPLEMENTARY INFORMATION: All comments received will be considered when preparing the final rule.

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting and recordkeeping requirements under the paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party. The specific exemption from the Paperwork Reduction Act is found in 5 CFR Part 1320. The information collection in this interim final rule is exempt from OMB approval under § 1320.4(a)(2), ''Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act''.

Public Law 104–4, ''Unfunded Mandates Report Act of 1995 (UMRA)''

It has been 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.

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Vietnam.

Accordingly, 32 CFR part 270 is added to read as follows:

PART 270—COMPENSATION OF CERTAIN FORMER OPERATIVES INCARCERATED BY THE DEMOCRATIC REPUBLIC OF VIETNAM

Subpart A—General

Sec.
270.1 Purpose.
270.2 Definitions.
270.3 Effective date.

Subpart B—Commission

270.4 Membership of Commission.
270.5 Staff.

Subpart C—Standards and Verification of Eligibility

270.6 Standards of eligibility.
270.7 Verification of eligibility.

Subpart D—Payment

270.8 Authorization of payment.
270.9 Amount of payment.
270.10 Time limitations.
270.11 Limitation on disbursements.
270.12 Payment in full satisfaction of all claims against the United States.
270.13 No right of judicial review or legal cause of action.
270.14 Limitation on attorneys fees.

Subpart E—Appeal Procedures

270.15 Notice of the Commission's determinations.
270.16 Procedures for filing petitions for reconsideration.
270.17 Action on appeal.

Subpart F—Reports to Congress

270.18 Reports to Congress.

Appendix A to Part 270—Application for payment

Authority: Sec. 657, Pub. L. 104–201, 110 Stat. 2422.

Subpart A—General

§ 270.1 Purpose.

The purpose of this part is to implement section 657 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201), which authorizes the Secretary of Defense to make payments to persons who demonstrate to the satisfaction of the Secretary of Defense that the persons were captured and incarcerated by the Democratic Republic of Vietnam as a result of the participation by the persons in certain operations conducted by the Republic of Vietnam.

§ 270.2 Definitions.

(a) *Applicant.* A person applying for payments under this part.

(b) *Child of an eligible person.* A recognized natural child, an adopted child, or a stepchild who lived with the eligible person in a regular parent-child relationship.

(c) *The Commission.* The Commission authorized to oversee payments to certain persons captured and interned by the Democratic Republic of North Vietnam, established under this part.

(d) *Eligible person.* A person determined by the Commission as eligible for payment under subpart C of this part.

(e) *OPLAN 34A.* The operation carried out under the auspices of the government of South Vietnam and the U.S. Military Assistance Command Vietnam, Studies and Observations Group (MACV/SOG), starting in 1964, which inserted commandos into North Vietnam for the purpose of conducting intelligence and other military activities. OPLAN 34A also refers to predecessor operations which were precursors to OPLAN 34A operations. OPLAN 35 means a separate but similar operation in which small military units were sent to conduct sabotage, reconnaissance, and other intelligence missions on or around the borders of Vietnam, Laos and Cambodia.

(f) *North Vietnam.* The Democratic Republic of Vietnam.

(g) *OSD.* The Office of the Secretary of Defense.

(h) *The Secretary.* The Assistant Secretary of Defense (Force Management Policy).

(i) *South Vietnam.* The Republic of Vietnam.

(j) *Spouse of an eligible person.* Someone who was married to that eligible person for at least 1 year immediately before the death of the eligible person.

(k) *Required declaration.* The statements to be signed and notarized in Appendix A to this part. All applicants must sign Part C and either Part A or Part B of Appendix A to this part.

§ 270.3 Effective date.

This part shall become effective on May 15, 1997.

Subpart B—Commission

§ 270.4 Membership.

The Secretary shall establish within OSD a Commission that is composed of the following voting members: One representative from OSD, who shall be the chairman of the Commission, and one representative from the Office of the Secretary of the Army, who shall function as the Staff Director. The Commission shall also be composed of one representative from each of the military departments. Members of the Commission may be either military or civilian and all members must possess, at a minimum, a Secret clearance.

§ 270.5 Staff.

(a) The Commission will have a support staff, which will include staff members sufficient to expeditiously and efficiently process the applications for payments under this part. All members of the staff will possess, as a minimum, a Top Secret clearance because of the sensitive nature of the information that may require review in determining eligibility of claimants.

(b) The Secretary will ensure that the Commission has all administrative support, including space, office and automated equipment and translation services, needed for the efficient and expeditious review and payment of claims. The Secretary may task appropriate Department of Defense elements to provide such support, either through assignment of personnel or the hiring of independent contractors.

Subpart C—Standards and Verification of Eligibility

§ 270.6 Standards of eligibility.

(a) A person is eligible for payments under this part if such person:

(1) Was an operative captured and incarcerated by North Vietnam as a result of his participation in operations conducted under OPLAN 34A or its predecessor program; or

(2) Served as a Vietnamese operative under OPLAN 35, and was captured and incarcerated by North Vietnamese forces as a result of the participation by the person in operations in Laos or along the Lao-Vietnamese border pursuant to OPLAN 35; and

(3) Remained in captivity after 1973 (or died in captivity) after participation in either OPLAN 34A or its predecessor program or OPLAN 35; and

(4) Has not previously received payment from the United States Government for the period spent in captivity.

(b) In the case of a decedent who would have been eligible for a payment under this part if alive, payment will be made to the survivors of the decedent in the following order:

(1) To the surviving spouse of an eligible person; or

(2) If there is no surviving spouse of an eligible person, to the surviving children of an eligible person, in equal shares.

(c) A payment may not be made under this part to, or with respect to, a person who the Commission determines, based on the available evidence, served in the People's Army of North Vietnam or provided active assistance to the Government of North Vietnam or forces opposed to the Government of South Vietnam or the United States during any period from 1958 through 1975.

(d) The Commission will make reasonable efforts to publicize the

availability of payments involved in this procedure, using existing public affairs channels.

§ 270.7 Verification of eligibility.

(a) All persons applying for payment under this part shall first submit a properly completed, signed and notarized Application for Payment as set out as Appendix A to this part, along with all corroborating documents and informed required, to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000. Submission of an Application for Payment without properly signed and notarized declarations will automatically render the application ineligible for consideration by the Commission for payment. All applicants must sign and have notarized the declarations in Part C of the Application for Payment. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the Applicant for Payment. If portions of the Application for Payment are not completed, the Commission may draw adverse inferences from the portions left incomplete.

(b) Staff Functions in the Verification of Eligibility Process. The Staff Director shall:

(1) Establish a database for logging and tracking applications for payments throughout the claims process, including appellate actions and final payment or denial of claims.

(2) Provide on site personnel at the National Archives Center, College Park, Maryland, to organize and translate finance records for review.

(3) Upon receipt of each Applicant for Payment, research cases to verify eligibility of claimant to include reviewing and analyzing existing records.

(4) Forward applications (including support documentation) to other U.S. Government agencies as required (e.g., CIA, INS) for review of their records, as needed to acquire documentation that may aid in determining the eligibility of claimants to receive payments.

(5) Present any information or comments resulting from the research and review of cases, plus any reasonably available and probative information, to the Commission with a recommendation on the eligibility of applicants.

(6) If eligibility is favorably approved by the Commission, forward written request to DFAS to effectuate payments.

(7) Prepare notification letters, on behalf of Commission, for forwarding to claimants notifying them of the final determination concerning approval or disapproval of their applications.

(8) In coordination with the Army Budget Office and OSD, determined appropriate fund cite that will be used for payments.

(9) Assist in the preparation of required Reports to Congress.

(10) Determined administrative budgetary support requirements and submit funding request to OSD.

(11) Provide for clerical and administrative support for the Commission.

(12) Create and maintain a system of records to manage all information generated by the processing of Applications for Payment under this part and to create an administrative record of actions by the Commission. All information received or originated from other Departments and agencies of the U.S. government will be retained, stored, and further disseminated only in accordance with pertinent law (e.g., 5 U.S.C. section 552(FOIA) and 5 U.S.C. section 552a (Privacy Act)) and conditions set by those originating Departments and agencies.

(c) Claims will be processed expeditiously. Within 18 months of actual receipt by the Commission of an Application for Payment, the Commission will determine the eligibility of the applicant. The standard for finding eligibility is whether the information reasonably available to the Commission indicates that the applicant is more likely than not to be eligible for a payment under this part. The burden of making a showing of eligibility shall be on the applicant. Upon determination of eligibility, the payment should be promptly accomplished.

(d) Applicants may request to appear in person before the Commission, which will retain discretion whether to grant such requests. The Commission may request the personal appearance or interview of any applicant as a condition of further consideration of his or her application if such appearance would significantly aid the Commission in its determination. All appearances shall be at the expense of the applicant.

Subpart D—Payment

§ 270.8 Authorization of payment.

Subject to the availability of appropriated funds, upon determination by the Commission of the eligibility of a person for payment, the Commission will authorize the Defense Finance and Accounting Service (DFAS) to make payments out of the funds appropriated for this purpose. Any payment authorized to a person under a legal disability, may, in the discretion of the Commission, be paid for the use of the person, to the natural or legal guardian, committee, conservator, or curator, or, if there is no such natural or legal guardian, committee, conservator, or curator, to any other person, including the spouse or children of such person, who the Commission determines is charged with the care of the person. The Commission will notify eligible persons of the process for disbursements.

§ 270.9 Amount of payment.

The amount payable to, or with respect to, an eligible person under this part is $40,000. If an eligible person can demonstrate to the satisfaction of the Commission that confinement or incarceration exceeded 20 years, the Commission may authorize payment of an additional $2,000 for each full year in excess of 20 (and a proportionate amount for a partial year), but the total amount paid to, or with respect to, an eligible person under this part may not exceed $50,000.

§ 270.10 Time limitations.

To be eligible for payments under this part, applicant must file Applications for Payments with the Commission within 18 months of the effective date of these regulations, May 15, 1997.

§ 270.11 Limitation on disbursement.

The Commission may, in its discretion, direct that the actual disbursement of a payment under this part be made only to the person who is authorized to receive the payment, and only upon the appearance of that person, in person, at any designated Defense Finance Accounting Service disbursement office in the United States. Upon approval of the Commission, payment may be made at such other location or in such other manner as the person authorized to receive payment may request in writing. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

§ 270.12 Payment in full satisfaction of all claims against the United States.

The acceptance of payment by, or with respect to, an eligible person under this part shall continue full satisfaction of all claims by or on behalf of that person against the United States arising from operations under OPLAN 34A or OPLAN 35.

§ 270.13 No right to judicial review or legal cause of action.

Subject to subpart E of this part, all determinations by the Commission pursuant to this part are final and conclusive, notwithstanding any other regulation. Applicants under this part have no right to judicial review, and such review is specifically precluded. This part does not create or acknowledge any legal right or obligation whatsoever.

§ 270.14 Limitation on attorneys fees.

Notwithstanding any contract or agreement, the representative of a person authorized to receive payment under this part may not receive, for services rendered in connection with the claim of, or with respect to, a person under this part, more than 10 percent of a payment made under this part on such claim.

Subpart E—Appeal Procedures

§ 270.15 Notice of the Commission's determinations.

Applicants whose claims for payment are denied in whole or in part by the Commission will be notified in writing of the determination. Applicants may petition the Assistant Secretary of Defense, Force Management Policy (or his designee) for a reconsideration of the Commission's determinations, and may submit any documentation in support of such petitions.

§ 270.16 Procedures for filing petitions for reconsideration.

A petition for reconsideration must be made to the Secretary, care of the Staff Director of the Commission at the address of the Commission set out in § 270.7, within 45 days from the receipt of the notice from the Commission of ineligibility. The Commission may waive that time limit for good cause shown.

§ 270.17 Action on appeal.

(a) The Assistant Secretary of Defense, Force Management Policy, (or his designee) will:

(1) Review the Commission's administrative record of the original determination.

(2) Review additional information or documentation submitted by the applicant to support his or her petition for reconsideration.

(3) Determine whether the decision of the Commission should be affirmed, modified, or revised.

(b) When there is a decision affirming the Commission's determinations, the Staff Director will notify the applicant in writing and include a statement of the reason for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department of Defense. The Secretary (or his designee) may decline to consider any subsequent petitions for reconsideration.

(d) When there is a decision modifying or reversing the Commission's determination, the notification should be immediately made to the Staff Director so as to implement the final action.

Subpart F—Reports to Congress

§ 270.18 Reports to Congress.

Not later than September 23, 1998, the Commission will prepare and the Secretary will submit to Congress a report on the payment of claims under this part. Subsequent to that initial report, the Commission will prepare and the Secretary will submit to Congress annual reports on the status of payment of claims.

Appendix A to Part 270—Application for Payment

Application for Payment

Privacy Act Statement

Authority: National Defense Authorization Act for Fiscal Year 1997, Public Law 104–201, section 657.

Principal Purpose: To evaluate applications for cash payments for those individuals, or their surviving spouse or children, who were captured and incarcerated by North Vietnam as a result of participating in specified joint United States-South Vietnamese operations.

Routine Uses: To the Immigration and Naturalization Service and the Central Intelligence Agency for purposes of verifying information relating to the claimant's eligibility for payment. To the Department of Justice for purposes of representing the Department of Defense in *Au Dong Quy, et al./Lost Commandos* v. *The United States.*

Disclosure: Voluntary. However, if portions are not completed the Commission may draw adverse inferences from the incomplete portions.

Social Security Number: Providing a social security number is voluntary. If one is not provided, the application for payment will still be processed.

Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000.

This application shall be executed by the person applying for eligibility, or his surviving spouse or children, or designated representatives of such persons.

Part A—Complete the following information on the person whose status as a former operative imprisoned by the North Vietnamese government is the basis for applying for payment:

(1) Current legal name:
(a) Aliases:
(b) Former, or other names used:
(2) Current address:
(3) Telephone Number(s):
(4) United States Social Security Number (optional); United States Immigration and Naturalization Service (INS) identification or similar number(s) (if any); and any equivalent social security or identification numbers (if any) issued to applicant by the Democratic Republic of Vietnam, the Republic of Vietnam, or the current government of Vietnam:
(5) Date of Birth:
(6) Place of birth:
(7) Distinguishing marks (e.g., scars):
(8) Family Identification:
(a) Parents:
(b) Spouse:
(c) Children:
(d) Brothers:
(e) Sisters:
(f) Others:
(9) Team name:
(10) Place of insertion:
(11) Date of launch:
(12) Dates of captivity:
(13) Name, address, and telephone number of counsel or attorney (if any):
(14) Required Declaration—(**Note:** If former operative is deceased, do not sign here; complete and sign Parts B and C below):

I served as an operative pursuant to OPLAN 34A or its predecessor operation, or a Vietnamese operative pursuant to OPLAN 35, and was captured and imprisoned by North Vietnam as a result of those activities. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I have not previously received payment from the United States Government as compensation for the period of captivity. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____
Signature

_____
Date

Sworn to and subscribed before me on _____ (Date).

_____
Notary Public

_____
Date

My commission expires on _____ (Date).

Part B—In addition to PART A, above, complete the following if applicant is a surviving spouse or child of the deceased person described in PART A, above.

(1) Current legal name of person submitting this application:
(a) Aliases:
(b) Former, or other names used:
(2) Current address:
(3) Telephone numbers:
(4) United States Social Security Number (optional), United States Immigration and Naturalization Service (INS) identification or similar number(s) (if any), and any

equivalent social security or identification numbers (if any) issued to applicant by the Democratic Republic of Vietnam, the Republic of Vietnam, or the current government of Vietnam:

(5) Date of birth:

(6) Place of birth:

(7) Relationship to deceased person:

(8) Date and place of marriage to deceased person (if you are a surviving spouse):

(9) If you are a surviving child of a deceased person who would have been eligible for payment and there is no surviving spouse—list the names and addresses (if known) of all other children of the deceased person, including all recognized natural children, step-children who lived with the deceased person, and adopted children. Provide the date of death for any children who are deceased.

(10) Name, address, and telephone number of counsel or attorney (if any):

(11) Required Declaration (**Note**: If former operative is deceased, applicant must sign in this part and Part C below.)

To the best of my information, knowledge, and belief, the deceased person described in Part A, above, served as an operative pursuant to OPLAN 34A or its predecessor operation, or as a Vietnamese operative pursuant to OPLAN 35, and was captured and imprisoned by North Vietnam as a result of those activities. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in forces opposed to the government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. He never previously received payment from the United States Government as compensation for the period of captivity, except for any death gratuity that may have been paid. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____

Signature

_____

Date

Sworn to and subscribed before me on _____ (Date).

_____

Notary Public

_____

Date

My commission expires on _____ (Date).

Part C—Documents Required

All documents submitted in support of an application for payment should be originals. If originals cannot be obtained, official copies of the originals certified by the official custodian of the documents should be submitted. If certified copies cannot be obtained, uncertified copies should be submitted. If uncertified copies cannot be obtained, submit sworn affidavits from two or more persons who have personal knowledge of the information sought.

The commission may waive the requirement for the following documents for good cause shown. Any such waiver shall not affect the burden on applicants of demonstrating eligibility for payments.

For the Person Described in Part A, Above

(1) *Identification.* A document with his current legal name and address (unless deceased), plus two or more sworn affidavits from individuals having personal knowledge of the person's identity (these should be submitted in addition to the document with current name and address).

(2) *One document of date of birth.* A birth certificate, or if unavailable, other proof of birth (e.g., passport).

(3) *One document of name change.* If the person's current legal name is the same as when sent on the OPLAN 34A or 35 missions, this section does not apply. If the person's current legal name (or name at the time of death) is different than that used when sent on the OPLAN 34A or 35 missions should submit a document or affidavit to corroborate the name change.

(4) *One document of evidence of guardianship.* If you are submitting this document on your own behalf, or if this application is being submitted by the spouse or surviving children of a deceased eligible person, this section does not apply. If you are executing this document as the guardian of the person identified in PART A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the person and the extent to which you are responsible for the care of the person, or your position as an officer of the institution in which the person is institutionalized.

(5) *One document of evidence of imprisonment.* This should be a document issued by the government of North Vietnam showing the dates of the person's imprisonment.

(6) *Any documents of evidence of participation in covered operations.* These documents should be contracts, orders, or other operational documentation corroborating participation in clandestine operations under OPLAN 34A (or its predecessor) or OPLAN 35.

For the Spouse or Surviving Children of a Deceased Person Described in Part A, Above

In addition to the documents described in PART C items (1) through (6) above concerning the deceased person described in PART A, above, submit the following:

(7) *One of the following documents as evidence of the deceased person's death:*

(a) A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician, or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

If you cannot obtain any of the above evidence of your spouse's death, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

For the Spouse of a Deceased Person Described in Part A Above

In addition to the documents described in Part C items (1) through (7) above concerning the deceased person described in Part A above, submit the following:

(8) *One of the following documents as evidence of your marriage to the deceased person:*

(a) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(b) An official report from a public agency as to a marriage which occurred while the deceased person was employed by such agency;

(c) An affidavit of the clergyman or magistrate who officiated;

(d) The certified copy of a certificate of marriage attested to by the custodian of the records;

(e) The affidavits of two or more eyewitnesses to the ceremony; or

(f) In jurisdictions where ''common law'' marriages are recognized, an affidavit by the surviving spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

If you cannot obtain any of the above evidence of your marriage, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(9) *In addition, submit the following documents about yourself:*

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that during the marriage, this section does not apply. Spouses whose current legal name is different than that used when married should submit a document or affidavits to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the spouse, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the spouse and the extent to which you are responsible for the care of the spouse or your position as an officer of the institution in which the spouse is institutionalized.

For the Surviving Children

In addition to documents described in PART C items (1) through (7), above, each surviving child should submit the following:

(10) One document as evidence of your relationship to your parent (the deceased person described in PART A, above), as follows:

If A Natural Child

(a) Birth certificate showing that the deceased person was your parent.

(b) If the birth certificate does not show the deceased person as your parent, a certified copy of:

(i) An acknowledgment in writing signed by the deceased person;

(ii) A judicial decree ordering the deceased person to contribute to your support;

(iii) The public record of birth or a religious record showing that the deceased person was named as your parent;

(iv) Affidavit of a person who knows that the deceased person accepted you as his child; or

(v) Public records, such as records of school or welfare agencies, which show that with the deceased person's knowledge, the deceased individual was named as your parent.

If An Adopted Child

An adopted child must submit a certified copy of the decree of adoption.

If A Step-Child

Submit all three of the following documents as evidence of the step-child relationship:

(a) One document as evidence of birth to the spouse of the deceased person, or other evidence that reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased person;

(b) One document as evidence that you were either living with or in a parent-child relationship with the deceased person at the time of his death; and

(c) One document as evidence of the marriage of the deceased person and the spouse, such as a certified copy of the record of marriage, or an abstract of the public records containing sufficient information to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

(11) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identify (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving child of a deceased person, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If your are not such a legally-appointed guardian, submit an affidavit describing your relationship to the child and the extent to which you are responsible for the care of the child, or your position as an officer of the institution in which the child is institutionalized.

Read the following statement carefully before signing this document. A false statement may be grounds for punishment by fine or imprisonment or both.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature

Date

Name (Print or Type)

Dated: July 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 97–19565 Filed 7–24–97; 8:45 am]

BILLING CODE 5000–04–M

POSTAL SERVICE

39 CFR Part 111

Changes in Preferred Postage Rates—Periodicals and Standard Mail (A)

AGENCY: Postal Service.

ACTION: Postage rate changes.

SUMMARY: Public Law 103–123 authorizes annual changes in the reduced rates formerly financed by appropriations for revenue forgone. This action implements these changes for FY 1998.

EFFECTIVE DATE: The changes pertaining to postage rates will be implemented effective 12:01 a.m., Sunday, October 5, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia Bennett, (202) 268–6350 or Thomas DeVaughan, (202) 268–4491.

SUPPLEMENTARY INFORMATION: Under 39 U.S.C. 3626(a) and 3642, the Postal Service is authorized to make annual adjustments in the Periodicals Preferred In-County per piece rates, the nonadvertising pound rates and per piece rates for Preferred Nonprofit publications, the nonadvertising pound rates and the per piece rates for Preferred Classroom publications; and postal rates for Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, and Library Mail. These adjustments are necessary to phase up the institutional-costs contribution of this mail to the levels required by law by FY 1999.

The rates for Periodicals Science-of-Agriculture publications zones 1 and 2 will remain the same at 75 percent of the rates charged on advertising in regular-rate publications, as specified by law. These rates will not change until regular Periodicals advertising rates change through a general rate case.

On June 2, 1997, the Board of Governors of the Postal Service, pursuant to its authority under 39 U.S.C. 3625(f), determined to implement the permanent rate changes for Classroom Periodicals approved by the Governors effective at 12:01 a.m. on October 5, 1997 (Resolution No. 97–9). The Board also determined in Resolution No. 97–9 to exercise its authority under 39 U.S.C. 3642 to establish temporary phased rates for Classroom Periodicals for FY 1998 at Step 5 of phasing schedule attached to the Resolution. The Step 5 rates for Classroom Periodicals will be implemented on October 5, 1997. Due to rounding adjustments, there are no changes to Library Mail rates.

Under both the new permanent and temporary rate schedules for Classroom Periodicals, no discount will be available for ZIP+4 letter mail. In this respect, Classroom will join the other preferred subclasses of Periodicals, for which the ZIP+4 letter discount category was eliminated in the earlier portions of Docket No. MC96–2. In the past, only a minute portion of Classroom mail has qualified for the ZIP+4 letter discount.

All references to Domestic Mail Manual (DMM) are based on DMM Issue 52 (July 1, 1997).

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR Part 111).

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

Domestic Mail Manual (DMM)

C CHARACTERISTICS AND CONTENT

C800 Automation-Compatible Mail

C810 Letters and Cards

* * * * *

2.0 DIMENSIONS

* * * * *

2.3 Maximum Weight

[Amend 2.3a and 2.3f to read as follows:]

Maximum weight limits are as follows:

a. 2.5 ounces: upgradable Presorted First-Class Mail and upgradable nonautomation Standard Mail.

* * * * *

f. 3.3362 ounces: automation First-Class Mail, automation Periodicals, and automation Nonprofit Standard Mail heavy letters, subject to 7.5.

* * * * *

C840 Barcoding Standards

* * * * *

2.0 BARCODE LOCATION—LETTER-SIZE PIECE

2.1 Barcode Clear Zone

[Amend the first sentence of 2.1 by removing ''each piece of ZIP+4 Classroom Periodicals'' to read as follows:]

Each letter-size piece in an automation rate mailing and each piece of upgradable Presorted First-Class Mail or upgradable Standard Mail (A) must have a barcode clear zone unless the piece bears a DPBC in the address block. * * *

* * * * *

E ELIGIBILITY

* * * * *

E200 Periodicals

* * * * *

E240 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

[Amend the introductory sentence to read as follows:]

All pieces in an automation Periodicals mailing must:

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 RATE APPLICATION

[Revise the heading of 2.1 to read as follows:]

2.1 Letters—Other Than Classroom Periodicals

[Amend 2.1b and 2.1d to read as follows:]

Automation rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

* * * * *

b. Groups of 150 or more pieces in 5-digit, 5-digit scheme, or unique 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3/5 automation Regular, or Nonprofit rate, as applicable.

* * * * *

d. Pieces for a unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3-digit automation In-County rate or the 3/5 automation Regular, or Nonprofit rate, as applicable, when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

[Redesignate current 2.2 as 2.3; redesignate and rename current 3.2 as 2.2; and amend redesignated 2.2 to read as follows:]

2.2 Letters—Classroom Periodicals

Automation rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or 5-digit scheme trays (and all pieces in one less-than-full overflow tray) qualify for the 5-digit automation rate.

b. Groups of 150 or more pieces in unique 3-digit trays (and all pieces in one less-than-full overflow tray) qualify for the 3-digit automation rate.

c. Pieces for a unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3-digit automation rate when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

d. Groups of fewer than 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in other 3-digit, 3-digit scheme, or AADC trays and all pieces in mixed AADC trays qualify for the basic automation rate.

[Delete current 3.0.]

* * * * *

E600 Standard Mail

E610 Basic Standards

* * * * *

E612 Additional Standards for Standard Mail (A)

* * * * *

4.0 BULK RATES

* * * * *

4.2 Minimum Per Piece Rates

[Amend 4.2 by revising the first sentence to read as follows:]

The minimum per piece rates (i.e., the minimum postage that must be paid for each piece) apply to Enhanced Carrier Route rate pieces weighing no more than 0.2066 pound rounded (3.3062 ounces rounded); Regular nonautomation and automation rate pieces weighing no more than 0.2068 pound rounded (3.3087 ounces rounded); Nonprofit Enhanced Carrier Route rate pieces weighing no more than 0.2084 pound rounded (3.3348 ounces rounded); and Nonprofit nonautomation and automation rate pieces weighing no more than 0.2085 pound rounded (3.3362 ounces rounded.) * * *

* * * * *

M MAIL PREPARATION AND SORTATION

* * * * *

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.3 Preparation Instructions

[Amend 1.3g and 1.3h by removing the last sentence of each: ''Scheme sortation is not available for ZIP+4 Classroom Periodicals.''; no other change to text.]

* * * * *

M012 Markings and Endorsements

* * * * *

4.5 OCR Read Area

[Amend 4.5 to read as follows:]

Any printing (including an endorsement or return address) on upgradable letter-size First-Class Mail or Standard Mail (A) must not interfere

with the delivery address lines within the OCR read area defined in C830.

* * * * *

M032 Barcoded Labels

* * * * *

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

1.3 Content Line (Line 2)

[Amend Exhibit 1.3a by removing the following two content identifier numbers (CINs) from the exhibit:]

* * * * *

PER Letters–ZIP+4
Presort
(Classroom publications only)
All tray levels—349 PER LTRS UPGR

* * * * *

NEWS Letters–ZIP+4 Presort
(Classroom publications only)
All tray levels—449 NEWS LTRS UPGR

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.2 Mailings

[Amend 1.2 by removing the last sentence to read as follows:]

All pieces in a mailing must meet the standards in C810 and must be sorted together to the finest extent required. A single automation rate mailing may include pieces prepared at 5-digit, 3-digit, 3/5, and basic automation rates, as applicable; all may be reported on the same postage statement and documentation. The definitions of a mailing and permissible combinations are in M011.

* * * * *

3.0 PERIODICALS

3.1 Tray Preparation

[Amend 3.1a and 3.1b to read as follows:]

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit/scheme: 5-digit trays required (150-piece minimum), 5-digit scheme trays optional (150-piece minimum); overflow trays allowed; for Line 1, for required 5-digit trays use 5-digit ZIP Code destination of pieces, preceded for military mail by the prefixes under M031; for Line 1, for optional 5-digit scheme trays, use destination shown in the current City State File.

b. 3-digit/scheme: required (150-piece minimum except no minimum for required origin/optional entry 3-digit(s)/scheme); overflow allowed; for Line 1, use L002, Column B.

* * * * *

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P013 Rate Application and Computation

* * * * *

4.0 RATE APPLICATION—STANDARD MAIL (A)

* * * * *

4.3 Bulk Rates

[Amend 4.3 to read as follows:]

Bulk rates are based on the weight of the pieces and are applied differently to pieces weighing less than or equal to a ''breakpoint'' (rounded to four decimal places) and those weighing more, as follows:

a. The appropriate minimum per piece rate applies to pieces weighing 0.2066 pound (3.3062 ounces) or less (Enhanced Carrier Route rates), 0.2068 pound (3.3087 ounces) or less (Regular rates), 0.2084 pound (3.3348 ounces) or less (Nonprofit Enhanced Carrier Route rates), or 0.2085 pound (3.3362 ounces) or less (Nonprofit rates).

b. A rate determined by adding the appropriate fixed per piece charge and the corresponding variable per pound charge (based on the weight of the piece) applies to pieces weighing more than 0.2066 pound (3.3062 ounces) (Enhanced Carrier Route rates), 0.2068 pound (3.3087 ounces) (Regular rates), 0.2084 pound (3.3348 ounces) (Nonprofit Enhanced Carrier Route rates), or 0.2085 pound (3.3362 ounces) (Nonprofit rates).

* * * * *

R RATES AND FEES

* * * * *

R100 First-Class Mail

* * * * *

[Amend footnote 3 of ''Summary of First-Class Rates'' chart to read as follows:]

[3] Weight not to exceed 3.3362 ounces; pieces over 3 ounces subject to additional standards.

* * * * *

R200 Periodicals

* * * * *

2.0 PREFERRED—IN-COUNTY

* * * * *

2.2 Piece Rates

[Revise 2.2 to read as follows:]

Per addressed piece:

Presort level	Non-automation	Automation [1]	
		Letter-size	Flat-size
Basic	$0.082	$0.082	$0.082
3/5			0.067
3–Digit		0.078	
5–Digit		0.065	
Carrier Route	0.044		
High Density	0.039		
Saturation	0.037		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3362 ounces for heavy letters); flat-size at 16 ounces.

* * * * *

3.0 PREFERRED—NONPROFIT

3.1 Pound Rates

[Amend 3.1a to read as follows:]

Per pound or fraction:

a. For the nonadvertising portion: $0.142

* * * * *

3.2 Piece Rates

[Revise 3.2 to read as follows:]

Per addressed piece:

Presort level	Non-automation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.217	$0.187	$0.193
3/5	0.172		0.148
3-Digit		0.149	
5-Digit		0.149	
Carrier	0.105		
Route			
High	0.098		
Density			
Saturation	0.084		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3362 ounces for heavy letters); flat-size at 16 ounces.

* * * * *

4.0 PREFERRED—CLASSROOM

4.1 Pound Rates

[Revise 4.1 to read as follows:]

Per pound or fraction:

a. For the nonadvertising portion: $0.143

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.169
SCF	0.190
1 & 2	0.214
3	0.224
4	0.251
5	0.292
6	0.336
7	0.388

Zone	Rate
8	0.432

4.2 Piece Rates

[Revise 4.2 to read as follows:]

Per addressed piece:

Presort level	Non-automation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.211	$0.191	$0.184
3/5	0.160		0.142
3-Digit		0.148	
5-Digit		0.140	
Carrier Route	0.115		
High Density	0.113		
Saturation	0.107		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3362 ounces for heavy letters); flat-size at 16 ounces.

4.3 Discounts

[Amend 4.3 to read as follows:]

Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00042 per piece.

b. Delivery unit zone piece discount or each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.006.

c. SCF zone piece discount for each addressed piece claimed in the pound rate portion at the SCF zone rate: $0.004.

* * * * *

R600 Standard Mail

* * * * *

4.0 NONPROFIT STANDARD MAIL

[Revise 4.0 to read as follows:]

4.1 Letter-Size Minimum Per Piece Rates

Pieces 0.2085 pound (3.3362 ounces) or less:

Entry discount	Nonautomation		Automation[1]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.135	$0.117	$0.102	$0.098	$0.085
DBMC	0.122	0.104	0.089	0.085	0.072
DSCF	0.117	0.099	0.084	0.080	0.067
DDU					

[1] Pieces weighing over 3 ounces subject to additional standards.

4.2 Nonletter-Size Minimum Per Piece Rates

Pieces 0.2085 pound (3.3362 ounces) or less:

Entry discount	Nonautomation		Automation[1]	
	Basic	3/5	Basic	3/5
None	$0.198	$0.149	$0.174	$0.125
DBMC	0.185	0.136	0.161	0.112
DSCF	0.180	0.131	0.156	0.107
DDU				

[1] Available only for automation-compatible flats.

4.3 Piece/Pound Rates

Pieces more than 0.2085 pound (3.3362 ounces):

Piece/pound rate[1]	Nonautomation		Automation[2]	
	Basic	3/5	Basic	3/5
Per Piece	$0.100	$0.04	$0.076	$0.024
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS	PLUS
None	0.470	0.484	0.470	0.484
DBMC	0.408	0.422	0.408	0.422
DSCF	0.382	0.396	0.382	0.396
DDU				

[1] Each piece is subject to both a piece rate and a pound rate.
[2] Available only for automation-compatible flats.

5.0 NONPROFIT ENHANCED CARRIER ROUTE STANDARD MAIL

5.1 Letter-Size Minimum Per Piece Rates

[Revise 5.1 to read as follows:]

Pieces 0.2084 pound (3.3348 ounces) or less:

Entry discount	Nonautomation		Automation[1]	
	Basic	High density	Saturation	Basic
None	$0.093	$0.087	$0.081	$0.082
DBMC	0.080	0.074	0.068	0.069
DSCF	0.075	0.069	0.063	0.064

Entry discount	Nonautomation		Automation [1]	
	Basic	High density	Saturation	Basic
DDU	0.069	0.063	0.057	0.058

[1] Pieces weighing over 3 ounces subject to additional standards.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–19640 Filed 7–24–97; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300514; FRL–5730–4]

RIN 2070–AB78

Cymoxanil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for cymoxanil in or on tomatoes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on tomatoes in Florida, Maryland, and New Jersey. This regulation establishes a maximum permissible level for residues of cymoxanil in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on May 15, 1999.

DATES: This regulation is effective July 25, 1997. Objections and requests for hearings must be received by EPA on or before September 23, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300514], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P. O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300514], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300514]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division 7505W, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9364, e-mail: pemberton.libby@epamail.epa. gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide cymoxanil, in or on tomatoes at 0.05 part per million (ppm). This tolerance will expire and is revoked on May 15, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(I) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe. '' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. '' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . ''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption. '' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited

tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Cymoxanil on Tomatoes and FFDCA Tolerances

Recent failures to control late blight in tomatoes and potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (*Phytophthora infestans*), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the United States were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the United States that will provide adequate control of the immigrant strains of late blight. EPA has authorized under FIFRA section 18 the use of cymoxanil on tomatoes for control of late blight in Florida, Maryland, and New Jersey. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of cymoxanil in or on tomatoes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on May 15, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tomatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether cymoxanil meets EPA's registration requirements for use on tomatoes or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of cymoxanil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida, Maryland, and New Jersey to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for cymoxanil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e. g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single

oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i. e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup children (1-6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cymoxanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of cymoxanil on tomatoes at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cymoxanil are discussed below.

1. *Acute toxicity*. Agency toxicologists have recommended that the acute endpoint of 10 mg/kg/day from the rat developmental toxicity study be used for acute dietary risk calculations. The developmental lowest observed effect level (LOEL) of 25 mg/kg/day is based on increased skeletal effects in fetuses. The population of concern for this risk assessment is females 13+ years old. An acute dietary food only MOE of 300 is required because the developmental effects occurred in the absence of maternal effects, suggesting a potential special pre-natal sensitivity for infants and children.

2. *Short - and intermediate - term non-dietary toxicity*. The maternal NOEL of 8.0 mg/kg/day in the rabbit developmental study used as the short term toxicity endpoint for non-dietary risk assessment. At the LOEL of 16 mg/kg/day there was an increased incidence of animals with cold ears, reduced food consumption, decreased defecation, decreased weight gain. The NOEL of 5.0 mg/kg/day from the two generation reproduction study in the rat was used to calculate intermediate term MOEs. At the LOEL of 25 mg/kg/day, there were decreases in body weight in males and in females during growth, gestation and lactation.

3. *Chronic toxicity*. EPA has established the RfD for cymoxanil at 0.02 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 1.6 mg/kg/day in a 1-year dog feeding study, using an uncertainty factor of 100. The LOEL of 3.1 mg/kg/day was based on decreased food consumption, decreased body weight, and decreased feed efficiency.

4. *Carcinogenicity*. Cymoxanil has not been classified as to carcinogenic potential. No cancer risks have been identified in the available cymoxanil data evaluation records.

B. Exposures and Risks

1. *From food and feed uses.* Time limited tolerances have been established (40 CFR 180.503) for the residues of cymoxanil, in or on potatoes. Risk assessments were conducted by EPA to assess dietary exposures and risks from cymoxanil as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary (food only) risk assessment used tolerance level residues and assumed 100% crop treated for tomatoes. The resulting high-end exposure estimate of 0.001 mg/kg/day, which results in a dietary (food only) MOE of 10,000 for females 13+ years, the population subgroup of cocern, should be viewed as a conservative risk estimate.

ii. *Chronic exposure and risk.* For the purpose of assessing chronic dietary exposure from cymoxanil, EPA assumed tolerance level residues and 100% of crop treated for tomatoes and all other commodities having cymoxanil tolerances. These conservative assumptions result in overestimation of human dietary exposures.

2. *From drinking water.* There is no entry for cymoxanil in the ''Pesticides in Groundwater Data Base'' (EPA 734-12-92-001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of cymoxanil in drinking water. No drinking water health advisory levels have been established for cymoxanil.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause cymoxanil to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with cymoxanil in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity. '' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether cymoxanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroup of concern, females 13+ years, the calculated MOE value (food) is 10,000. The Agency acknowledges the potential for exposure to cymoxanil in drinking water, but does not expect that exposure would result in an aggregate MOE (food plus water) that would exceed the Agency's level of concern for acute dietary exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cymoxanil residues.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will utilize 0.6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1-6 years old ''discussed below''. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Use the following sentence . Despite the potential for exposure to cymoxanil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cymoxanil residues.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cymoxanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. This is the case. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies— Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 25 mg/kg/day, based on decreased feed consumption at the LOEL of 75 mg/kg/day. The developmental (fetal) NOEL was 10 mg/kg/day, based on increased skeletal findings at the LOEL of 25 mg/kg/day.

Rabbits. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 8.0 mg/kg/day, based on decreased body weight gain, decreased food consumption, and decreased fecal output at the LOEL of 16 mg/kg/day. The developmental (pup) NOEL was 32 mg/kg/day, and was the highest dose tested. .

c. *Reproductive toxicity study— Rats.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 5.0 mg/kg/day, based on decreased body weight and food consumption at the LOEL of 25 mg/kg/day. The reproductive/developmental pup) NOEL was 5.0 mg/kg/day, based on decreased survival on post-natal days 0-4 and decreased body weight at the LOEL of 25 mg/kg/day.

d. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post- natal toxicity for cymoxanil is complete with respect to current data requirements. Cymoxanil demonstrates extra pre-natal sensitivity for infants and children based on the results of the developmental study in rats. The developmental NOEL and the LOEL were 10 and 25 mg/kg/day respectively. In comparison, the parental NOEL and LOEL were 25 and 75 mg/kg/day respectively. This difference means that developmental effects (skeletal findings) occurred in the absence of parental effects at the 25 mg/kg/day level. Therefore, OPP recommended that an acute dietary risk assessment be performed for females 13+ years. However, the calculated MOE even without the use of an additional 10 fold safety factor (or less) was 10,000 which clearly demonstrates that the acute pre-natal risk to unborn children from exposure to aggregate residues of cymoxanil does not exceed the Agency's level of concern.

2. *Acute risk.* The acute dietary MOE (food) was calculated to be 10,000 for females 13+ years (accounts for both maternal and fetal exposure). These MOE calculations were based on the developmental NOEL in rats of 10 mg/kg/day. This risk assessment assumed 100% crop-treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants to cymoxanil. The Agency acknowledges the potential for exposure to cymoxanil in drinking water, but does not expect that exposure would result in aggregate MOEs (food plus water) that would exceed the Agency's level of concern for acute dietary exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cymoxanil from food will utilize from 0.6% of the RfD for non-nursing infants less than one year old, up to 1.3% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to cymoxanil in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cymoxanil residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood for the purpose of this tolerance. The residue of cocern, for the purpose of this tolerance, is cymoxanil. Secondary residues are not expected in animal commodities as no feed items are associated with this use.

B. Analytical Enforcement Methodology

Methods are available for the enforcement of residues of cymoxanil. Available methods include Multi-Residue Protocol D and a method submitted by Du Pont (Analytical Method for the Determination of Cymoxanil in Grapes and Tomatoes Using Column Switching Liquid Chromatography). The latter method has undergone a successful independent laboratory validation (ILV) and EPA petition method validation (PMV). The methods are available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805.

C. Magnitude of Residues

Residues of cymoxanil are not expected to exceed 0.05 ppm in/on tomatoes as a result of this proposed use. Secondary residues are not expected in animal commodities as no feed items are associated with this use.

D. International Residue Limits

There are no CODEX, Canadian or Mexican MRLs established for cymoxanil in/on tomatoes.

VI. Conclusion

Therefore, the tolerance is established for residues of cymoxanil in tomatoes at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process

for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 23, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300514] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail. epa. gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* , or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. In § 180. 503, in paragraph (b), by revising the introductory text and alphabetically adding to the table the tolerance to read as follows:

§ 180. 503 Cymoxanil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide . cymoxanil in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	* *
Tomatoes	0.05	May 15, 1999

* * * * *

[FR Doc. 97–19667 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300513; FRL–5730–3]

RIN 2070–AB78

Dimethomorph; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for dimethomorph in or on tomatoes, tomato puree, and tomato paste . This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on tomatoes. This regulation establishes a maximum permissible level for residues of dimethomorph in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on May 15, 1999.

DATES: This regulation is effective July 25, 1997. Objections and requests for hearings must be received by EPA on or before September 23, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300513], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300513], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300513]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division 7505W, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide dimethomorph, in or on tomatoes at 1 part per million (ppm), 2 ppm in tomato puree, and 6 ppm in tomato paste. These tolerances will expire and are revoked on May 15, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(I) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency

from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Dimethomorph on Tomatoes and FFDCA Tolerances

Recent failures to control late blight in tomatoes and potatoes with the registered fungicides, have been caused almost exclusively by immigrant strains of late blight (*Phytophthora infestans*), which are resistant to the control of choice, metalaxyl. Before the immigrant strains of late blight arrived, all of the strains in the United States were previously controlled by treatment with metalaxyl. Presently, there are no fungicides registered in the United States that will provide adequate control of the immigrant strains of late blight. EPA has authorized under FIFRA section 18 the use of dimethomorph on tomatoes for control of late blight in Florida, Maryland, and New Jersey. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of dimethomorph in or on tomatoes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address urgent non-routine situations and to ensure that the resulting foods are safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although thess tolerances will expire and are revoked on May 15, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on tomatoes, tomato puree, and tomato paste after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether dimethomorph meets EPA's registration requirements for use on tomatoes or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of dimethomorph by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Florida, Maryland, and New Jersey to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethomorph, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure

that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 7-12 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of dimethomorph and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of dimethomorph on tomatoes at 1 ppm, tomato puree at 2 ppm, and tomato paste at 6 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dimethomorph are discussed below.

1. *Acute toxicity.* An acute dietary risk endpoint was not identified and an acute dietary risk assessment is not required.

2. *Short - and intermediate - term non-dietary toxicity.* OPP recommends use of the developmental toxicity study in rats for short-term, non-dietary risk calculations. The maternal NOEL was 60.0 mg/kg/day. At the LOEL of 160 mg/kg/day there was reduced food commodity consumption, body weights, and weight gain. Intermediate-term risk endpoints have also been identified. The NOEL of 15 mg/kg/day in the 90-day dog feeding study has been chosen as the intermediate-term toxicity endpoint. At the LOEL of 43 mg/kg/day, there were decreases in the absolute and relative weights of the prostrate and possible threshold liver effects.

3. *Chronic toxicity.* EPA has selected the RfD for dimethomorph of 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on a NOEL of 10 mg/kg/day in a 2-year chronic rat study, using an umcertainty factor of 1,000. The lowest-observed-effect level (LOEL) of 57.7 mg/kg/day was based on decreased body weight and increased incidence of liver ''ground glass'' foci in females. The additional 10-fold uncertainty factor was used to protect infants and children, since data gaps consisted of rat and rabbit

developmental studies and the rat reproduction study.

4. *Carcinogenicity*. Dimethomorph has not been classified as to carcinogenic potential. No cancer risks have been identified in the available dimethomorph data evaluation records.

B. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, in or on potatoes. Risk assessments were conducted by EPA to assess dietary exposures and risks from dimethomorph as follows:

Chronic exposure and risk. For the purpose of assessing chronic dietary exposure from dimethomorph, EPA assumed tolerance level residues and 100% of crop treated for published, pending, and this proposed use of dimethomorph. These conservative assumptions result in overestimation of human dietary exposures.

2. *From drinking water.* There is no entry for dimethomorph in the ''Pesticides in Groundwater Data Base'' (EPA 734–12–92–001, September 1992). There is no established Maximum Concentration Level (MCL) for residues of dimethomorph in drinking water. No drinking water health advisory levels have been established for dimethomorph.

Chronic exposure and risk. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause dimethomorph to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with dimethomorph in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. Using the conservative TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize 31% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1-6 years old ''discussed below''. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of dimethomorph, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless

EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies. — Rats*. In the developmental study in rats, the maternal (systemic) NOEL was 60 mg/kg/day, based on decreased food consumption, decreased body weight and decreased weight gain at the LOEL of 160 mg/kg/day. The developmental (fetal) NOEL was not determined.

Rabbits. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 300 mg/kg/day, based on increased abortions at the the LOEL of 650 mg/kg/day. The developmental (pup) NOEL was not determined.

c. *Reproductive toxicity study.— Rats*. In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was 15 mg/kg/day, based on decreased body weight and weight gain at the LOEL of 50 mg/kg/day. The reproductive/developmental (pup) NOEL was 15 mg/kg/day, based on decreased incisor eruption on post-partum day 10 at the LOEL of 100 mg/kg/day.

d. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for dimethomorph is not complete with respect to current data requirements. It can not be established whether dimethomorph does or does not demonstrate extra pre- or post-natal sensitivity for infants and children based on the results of the rat and rabbit developmental studies and the rat reproduction study. To compensate for the lack of acceptable studies, the RfD 0.01 mg/kg/day was calculated using an uncertainty factor of 1,000. The additional 10-fold uncertainty factor was added because of the data gaps and in order to protect infants and children from possible pre- and post-natal, toxic risks from dietary exposure to dimethomorph.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to dimethomorph from food will utilize from 22% of the RfD for non-nursing infants less than one year old, up to 67% for children 1-6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of dimethomorph in tomatoes is adequately understood for the purposes of this these tolerances. The residue of concern, for the purposes of these tolerances, is dimethomorph. The nature of the residue in ruminants is not adequately understood. However, there are no feed items associated with this use.

B. Analytical Enforcement Methodology

An adequate method is available for detection of the residues of concern for the purpose of this FIFRA section 18 use. High Performance Liquid Chromotography/Ultra Violet (HPLC/UV) analytical method FAMS 002-02 is adequate for detecting residues of dimthomorph in/on tomatoes. This method has undergone a successful Agency validation. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7506), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5805.

C. Magnitude of Residues

Residues of dimethomorph are not expected to exceed 1.0 ppm in/on tomatoes or 2 ppm in tomato puree and 6 ppm in tomato paste as a result of this proposed use. Secondary residues are not expected in animal commodities as no feed items are associated with this use.

D. International Residue Limits

No CODEX, Canadian or Mexican maximum residue levels (MRLs) have been established for residues of dimethomorph in/on tomatoes.

VI. Conclusion

Therefore, tolerances are established for residues of dimethomorph in tomatoes at 1 ppm, tomato puree at 2 ppm, and tomato paste at 6 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 23, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300513] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.493 is amended by revising paragraph (b) to read as follows:

§ 180.493 Dimethomorph: tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the fungicide dimethomorph in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Tomatoes	1	May 15, 1999
Tomato paste	6	May 15, 1999
Tomato puree	2	May 15, 1999

* * * * *

[FR Doc. 97–19672 Filed 7–24–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300518; FRL–5731–9]

RIN 2070–AB78

Pyriproxyfen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of pyriproxyfen in or on cotton seed and cotton gin byproducts . This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cotton in Arizona and California. This regulation establishes a maximum permissible level for residues of pyriproxyfen in these food/feed commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on July 31, 1998.

DATES: This regulation is effective July 25, 1997. Objections and requests for hearings must be received by EPA on or before September 23, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300518], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300518], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300518]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the pesticide pyriproxyfen, in or on cotton seed and cotton gin byproducts at 0.05 and 2.0 part per million (ppm), respectively. These tolerances will expire and are revoked on July 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Pyriproxyfen on Cotton and FFDCA Tolerances

Requests were received from Arizona and California for use of two insect growth regulators, buprofezin and pyriproxyfen (residues and associated risk assessments of buprofezin are addressed in a separate **Federal Register** document), for control of a recently introduced strain or species of

sweetpotato whitefly, which has had devastating effects on cotton and various vegetable crops in the southwest for the past several years. This newer strain of whitefly, often referred to as the silverleaf whitefly, appears to be capable of quickly developing resistance, and is resistant to available alternative controls. Use of two chemicals was approved because the use patterns of each only allow one application, which will not be sufficient to control whitefly populations throughout the season. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on cotton for control of whiteflies in Arizona and California. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyriproxyfen in or on cotton seed and cotton gin byproducts. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on July 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cotton seed and cotton gin byproducts after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whetherpyriproxyfen meets EPA's registration requirements for use on cotton or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of pyriproxyfen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Arizona and California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyriproxyfen, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated.

High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyriproxyfen and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of pyriproxyfen on cotton seed and cotton gin byproducts at 0.05 and 2.0 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen are discussed below.

1. *Acute toxicity*. There are no acute dietary endpoints of concern for pyriproxyfen. No concern exists for acute dietary exposure to pyriproxyfen residues.

2. *Short - and intermediate - term toxicity.* There are no endpoints, and no concern exists for short- or intermediate-term toxicity from pyriproxyfen.

3. *Chronic toxicity*. EPA has established the RfD for pyriproxyfen at 0.35 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic feeding/carcinogenicity study in rats with a NOEL of 35.1 mg/kg/day and an uncertainty factor of 100, based on intra- and interspecies differences. At the lowest observed effect level (LOEL) of 150 mg/kg/day, there was a decrease in body weight gain in females.

4. *Carcinogenicity*. Pyriproxyfen has been classified in Group E of EPA's cancer classification system, indicating there is evidence of non-carcinogenicity for humans. Therefore, there is no concern for cancer risk from exposure to pyriproxyfen.

B. Exposures and Risks

1. *From food and feed uses.* There are currently no registered food uses for pyriproxyfen, and thus no established tolerances. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyriproxyfen as follows:

Chronic exposure and risk. The chronic dietary (food only) risk assessment used tolerance level residues and assumed 100% crop treated. Therefore, the resulting exposure estimates should be viewed as conservative; further refinement using anticipated residues and/or percent of crop treated would result in lower dietary exposure estimates. For chronic dietary (food only) risk estimates, all population subgroups had less than 1% of the RfD utilized .

2. *From drinking water.* Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to

calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause pyriproxyfen to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with pyriproxyfen in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Pyriproxyfen is currently registered for use on the following residential non-food sites: storage areas; farm animals; pets; household or domestic dwellings; spot treatments; food processing, handling, and storage areas; commercial storage warehouses; hospitals and related institutions; eating establishments; and canneries and frozen food plants.

Chronic exposure and risk. EPA scientists have determined that the residential uses ofpyriproxyfen would not constitute a chronic scenario. Therefore, a chronic risk assessment from non-dietary residential exposures is not necessary.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether pyriproxyfen has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk.. Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize <1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 - 6 years old, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Use the following sentence if applicable, or delete and insert applicable text. Despite the potential for exposure to pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyriproxyfen residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

b. *Developmental toxicity studies.* In both rats and rabbits, developmental studies demonstrated that the developmental findings occurred at dose levels at which maternal toxicity was also present. The maternal NOEL and LOEL for both studies were 100 and 300 mg/kg/day, respectively; the developmental NOEL and LOEL for both studies were 300 and 1,000 mg/kg/day, respectively. Therefore, there was no developmental toxicity at 300 mg/kg/day in both species, although maternal effects were present at this dose level. These data demonstrate no special pre-natal sensitivity for developing fetuses.

c. *Reproductive toxicity study*. In the post-natal evaluation to infants and children, as shown in the results of the rat reproduction study, the NOEL and LOEL (87 and 453 mg/kg/day, respectively) for both parental systemic toxicity effect of decreased weight gain and pup toxicity occurred at the same dose levels. There were slight differences in the mg/kg/day levels in parental and pup values, which reflect the fact that the maternal and paternal animals have slightly different rates of food utilization. The results of the rat reproduction study demonstrate no special post-natal sensitivity for infants and children.

d. *Pre- and post-natal sensitivity*. As stated above, the results of the developmental and reproduction study indicated no special pre- or post- natal sensitivity for infants and children.

e. *Conclusion*. Given the fact that there is a complete toxicity data base for pyriproxyfen, and no special pre- or post- natal sensitivities are indicated for infants and children, an additional 10-fold safety factor is not warranted. EPA concludes that there is reasonable certainty of safety for infants and children exposed to dietary residues of pyriproxyfen.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize <1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyriproxyfen residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is adequately understood, and the residue to be regulated is parent pyriproxyfen [4-phenoxyphenyl (RS)-2-(2-pyridyloxy)propyl ether]. Although no formal decision has been made on the residue to be regulated in animal commodities, EPA concludes that for the purposes if this section 18 use, it is appropriate to regulate based on residues of the parent pyriproxyfen .

B. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerance expression. The methodology for pyriproxyfen and its metabolites in cottonseed and gin byproducts are summarized in the following reports: ''Determination of Pyriproxyfen and PYPAC Residues in Cottonseed'', Method RM–33P–2–2; ''Determination of Pyriproxyfen in Cotton Gin Trash'', Method RM–33P–4–1; and, ''Determination of DPH-PYR and DPH-PYR Conjugates in Cotton Gin Trash'', Method RM–33P–5, all by Valent U.S.A. Corporation, Dublin, California.

C. Magnitude of Residues

Residues of pyriproxyfen are not expected to exceed 0.05 ppm in cottonseed, and 2.0 ppm in cotton gin byproducts, as a result of this emergency exemption use.

D. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue limits (MRLs) for residues of pyriproxyfen on cotton.

VI. Conclusion

Therefore, tolerances are established for residues of pyriproxyfen in cotton seed at 0.05 ppm, and cotton gin byproducts at 2.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 23, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300518] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will

transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. By adding § 180.510 to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) *General* . [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the insect growth regulator pyriproxyfen, in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Cotton seed	0.05	7/31/98
Cotton, gin byproducts	2.0	7/31/98

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–19671 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300516; FRL–5732–3]

RIN 2070–AB78

Sodium Salt of Acifluorfen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of the sodium salt of acifluorfen and its metabolites in or on lima beans, cowpeas, and southern peas . This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lima beans, cowpeas, and southern peas. This regulation establishes a maximum permissible level for residues of the sodium salt of acifluorfen in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on December 31, 1998.

DATES: This regulation is effective July 25, 1997. Objections and requests for hearings must be received by EPA on or before September 23, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300516], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified

by the docket control number, [OPP–300516], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300516]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for the combined residues of the herbicide sodium salt of acifluorfen and its metabolites (the corresponding acid, methyl ester and amino analogues), in or on lima beans, cowpeas, and southern peas at 0.1 part per million (ppm). These tolerances will expire and are revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(I) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for the Sodium Salt of Acifluorfen on Lima Beans, Cowpeas, and Southern Peas and FFDCA Tolerances

According to the Tennessee Extension Service the Hophornbeam copperleaf (*Acalypha ostryaefolia*) has become such an overwhelming pest that entire fields were abandoned in 1995. The fields in question constitute some of the most fertile agricultural land in West Tennessee, an area where farming and agriculturally related businesses are the primary sources of income. The Applicant stated that registered herbicides and/ or cultivation practices do not provide effective control of this weed. The State is concerned that uncontrolled Hophornbeam copperleaf could have a devastating effect for growers and the local economy. EPA has authorized under FIFRA section 18 the use of acifluorfen on lima beans, cowpeas, and southern peas for control of Hophornbeam copperleaf in Tennessee. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of the acifluorfen in or on lima beans, cowpeas, and southern peas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lima beans, cowpeas, and southern peas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether acifluorfen meets EPA's registration requirements for use on

lima beans, cowpeas, and southern peas or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of acifluorfen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Tennessee to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for acifluorfen, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High-end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level.

The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 -6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of acifluorfen and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for the combined residues of the sodium salt of acifluorfen and its metabolites (the corresponding acid, methyl ester, and amino analogues) in or on lima beans, cowpeas, and southern peas at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by acifluorfen are discussed below.

1. *Acute toxicity.* An acute dietary endpoint was not identified from the toxicity studies available to the Agency; therefore, this risk assessment was not conducted.

2. *Short - and intermediate - term toxicity.* Based on the available data, the Office of Pesticide Programs (OPP) has determined that the NOEL of 300 mg/kg/day from a 21-day dermal toxicity study in rabbits should be used to assess risks from short- and intermediate-term dermal exposures. The Lowest Effect Level (LEL) of 1,000 mg/kg/day was based on increased mortality (95%) by Day 8. For short- and intermediate-term inhalation toxicity, the OPP has determined that the NOEL of 20 mg/kg/day from a developmental toxicity study in rabbits should be used to assess risks for residential exposure scenarios. The LEL of 90 mg/kg/day was based on reduced mean fetal weights.

3. *Chronic toxicity.* EPA has established the RfD for acifluorfen at 0.013 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2-generation reproductive toxicity study in rats. The NOEL (parental and reproductive) of 1.25 mg/kg/day was based on decreased survival and an increased incidence of kidney lesions at the LEL of 25.0 mg/kg/day. A 100-fold uncertainty factor (UF) was added to account for inter-species extrapolation and intra-species variability .

4. *Carcinogenicity.* Acifluorfen has been classified as a Group B2 (probable human carcinogen) chemical by the OPP Cancer Peer Review Committee (CPRC), based on an increased number of liver tumors in both sexes of mice and a high incidence of uncommonly occurring stomach papillomas in male mice. The Committee recommended using the Q_1* approach for quantification of human risk. The Q_1* is 0.11 $(mg/kg/day)^{-1}$.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.383) for the combined residues of the sodium salt of acifluorfen and its metabolites (the acid, methyl ester, and amino analogues), in or on peanuts, rice, and soybeans at 0.1 ppm; strawberries at 0.05 ppm; and, animal commodities at 0.02 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from acifluorfen as follows:

Chronic exposure and risk. This chronic dietary risk assessment was partially refined using percent crop-treated estimates and anticipated residue values for selected commodities. Expansion of these refinements to the remaining commodities would result in a lower chronic dietary exposure estimate. The risk assessment took into account the published tolerances (none are currently pending) for the regulable residues of the sodium salt of acifluorfen, plus this Section 18 tolerance. The population subgroup with the largest percentage of the RfD occupied is children 1 to 6 year old, at 0.4% of the RfD.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, acifluorfen (acid) is persistent, readily leaches, and is highly mobile. No Maximum Contaminant Level is established for acifluorfen residues in drinking water. Health Advisory Levels for acifluorfen residues in drinking water are established as follows: for a 10-kg child, a range of 2 mg/L from 1-day exposure to 0.1 mg/L for longer-term exposure up to 7 years; for a 70-kg adult, 0.4 mg/L for longer-term exposure.

Information in the EPA Pesticides in Groundwater Database indicates that a total of 1,185 discrete wells in 8 states (AR, CA, GA, IA, LA, MS, VA, WA) were sampled for residues of acifluorfen during the period 1984-1991. Detectable residues were reported (0.003-0.025 µg/L) in only 0.3% of the sampled wells.

Chronic exposure and risk. The EPA has calculated chronic exposure levels to acifluorfen residues in drinking water for the U.S. population and children. The Agency estimated adult exposure to be 0.7×10^{-6} mg/kg/day and child exposure to be 2.5×10^{-6} mg/kg/day. The Agency used very conservative assumptions for the exposure assessments. EPA used the highest acifluorfen residue level (0.025 ug/L) found from the monitoring of 1,185 wells over an 8-year period in the 8 states mentioned above to estimate exposure. In addition, all the drinking water consumed in the US was assumed to contain this high end level of acifluorfen residues (even though only 0.3% of all the wells monitored from 1984-91 contained detectable residues of acifluorfen). The Agency estimated that the chronic dietary risks from drinking water will utilize <0.01% of

the RfD for adults and <0.02% of the RfD for children.

3. *From non-dietary exposure.* Acifluorfen is currently registered for use on the following outdoor residential sites: ornamentals (flowering plants, plants, lawns, woody shrubs); mulch; and, walkways, paths, trails, lanes, and private roads. Based on the nature of the outdoor uses, the EPA concludes that acute and chronic exposure scenarios do not exist for acifluorfen. A short- and/or intermediate-term exposure scenario may exist.

Short- and intermediate-term exposure and risk. The outdoor residential uses of acifluorfen may constitute a short- and/or intermediate-term exposure scenario, but the Agency currently lacks residential-related exposure data to complete a comprehensive residential risk assessment of acifluorfen.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Acifluorfen is a member of the diphenyl ether group of herbicides. Other members include bifenox, diclofop methyl, fomesafen, lactofen, nitrofen, and oxyfluorfen. Acifluorfen is a major metabolite of lactofen in plants, and is assumed to share a common mechanism of toxicity with lactofen. At present, there is not sufficient information to determine if any other pesticides may also share this common mechanism of toxicity. For purposes of this Section 18 time-limited tolerance action, the Agency has not assumed that acifluorfen and lactofen have a common mechanism of toxicity with any other substances.

To estimate the cumulative (acifluorfen + lactofen) aggregate (food + water) dietary and cancer exposures, estimates for lactofen on its regulated commodities (snap beans, soybeans, and cottonseed) were added to estimates for acifluorfen (encompassing all its established plant and animal commodity tolerances and the tolerance proposed for this Section 18 use).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the ARC exposure assumptions described above, and taking into account the completeness and reliabilty of the toxicity data, EPA has concluded that aggregate exposure to acifluorfen from food and water will utilize ≈0.2% (≈0.2% from food + ≈0.01% from water) of the RfD for the U.S. population.

The chronic dietary (food only) risk assessment for lactofen was based on percent crop-treated values for soybeans and anticipated residue estimates for soybeans, snap beans, and cottonseed. Using these partially refined exposure assumptions, the Agency determined that chronic dietary (food only) exposure will utilize <1% of the RfD for lactofen (established at 0.02 mg/kg/day) for the U.S. population. The Agency determined that exposure to lactofen from drinking water will utilize <1% of the RfD. This assessment was based on acifluorfen monitoring data. The aggregate chronic (food + water) dietary exposure contributed by lactofen residues will utilize <2% (<0.0004 mg/kg/day) of the lactofen RfD (and corresponds to 3% of the acifluorfen RfD). The cumulative (acifluorfen + lactofen) aggregate chronic dietary (food + water) exposure was estimated to be on the order of 3 - 4% of the RfD for acifluorfen. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

There are no registered indoor residential uses of acifluorfen and the Agency has determined that chronic exposure scenarios do not exist for the the outdoor residential uses of acifluorfen. Lactofen is not registered for residential uses.Therefore, residential exposure is not considered to be a contributing factor to cumulative aggregate chronic exposure.

The Agency concludes that there is a reasonable certainty that no harm will result from cumulative chronic aggregate exposure to lactofen and the sodium salt of acifluorfen residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

There are no registered residential uses of lactofen. There are no registered indoor uses of acifluorfen. Although the outdoor residential uses of acifluorfen may constitute a short- and/or intermediate-term exposure scenario, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including acifluorfen.

Based on the low percentage (≈3 - 4%) of the RfD occupied by the cumulative (lactofen + acifluorfen) aggregate dietary exposure, and in the best scientific judgment of the EPA, the short- and intermediate-term aggregate exposure to residues of lactofen and the sodium salt of acifluorfen will not exceed the Agency's level of concern.

D. Aggregate Cancer Risk for U.S. Population

Based on published tolerances (none are currently pending), and this proposed Section 18 use, the dietary (food only) cancer risk from /acifluorfen residues was calculated as 0.65×10^{-6} (upper bound estimate). The calculation used the partially refined exposure

assumptions described above for generating ARCs, and amortized the cancer risk over a 70-year lifetime. The drinking water cancer risk from acifluorfen residues was estimated as 0.08×10^{-6}. The aggregate dietary (food + water) cancer risk from exposure to acifluorfen residues is thus 0.73×10^{-6}.

Based on the tolerances for lactofen (a B2 carcinogen with a Q_1* of 0.17 (mg/kg/day)$^{-1}$) in/on snap beans, soybeans, and cottonseed, the dietary (food only) cancer risk from residues of lactofen was estimated as 0.45×10^{-6} (upper bound) for the U.S. population. For this analysis the Agency used percent crop-treated values for soybeans only and anticipated residue estimates for all 3 crops. The drinking water cancer risk estimate for lactofen was based on the acifluorfen monitoring data discussed above. As previously indicated, the drinking water cancer risk from acifluorfen residues was estimated as 0.08×10^{-6}. The cumulative (lactofen + acifluorfen) aggregate (food + water) upper bound lifetime dietary cancer risk for the U.S. population from exposure to acifluorfen and lactofen residues is thus the sum of:

Acifluorfen (food)—0.65×10^{-6}
Lactofen (food)—0.45×10^{-6}
Acifluorfen/Lactofen (water)—0.08×10^{-6}
Cumulative Aggregate Total:—1.2×10^{-6}

This cumulative aggregate dietary cancer risk of 1.2×10^{-6} for the U.S. population from exposure to acifluorfen and lactofen is considered by EPA to be a very conservative estimate because:

(1) The chronic/cancer analyses for acifluorfen and lactofen were only partially refined by use of anticipated residue estimates and percent crop-treated (%CT) values on selected commodities, and are thus over-estimates of exposure.

(2) Lactofen use on snap beans is currently limited to Oregon and Tennesse, which comprises only approximately 20% of the U.S. production (for processing, in tons; approximately 12% based on acres planted; Ag. Stat. 1992), so use of actual %CT values would be expected to significantly reduce the estimate of exposure; snap beans represents 88% of the lactofen dietary (food) cancer risk contributions.

(3) Exposure estimates for lactofen/soybeans and acifluorfen/soybeans were treated as additive for purposes of assessing cumulative risk, and thus are likely an over-estimate of exposure,

(4) Tolerance levels for acifluorfen and lactofen are based on a summing of the method sensitivity levels for each component of their respective regulable residues, and do not reflect the presence of detectable residues.

In fact, there is a consistent absence of quantifiable residues in crops treated with either acifluorfen or lactofen.

For these reasons, the EPA considers that the cumulative (lactofen + acifluorfen) aggregate (food + water) upper bound dietary cancer risk estimate of 1.2×10^{-6} for the U.S. population from exposure to acifluorfen and lactofen represents a worst case scenario. Further refinement would result in a lower risk estimate. In the best scientific judgment of the Agency, this cumulative aggregate dietary cancer risk estimate does not exceed the Agency's level of concern, and EPA concludes that there is a reasonable certainty that no harm in the form of cancer will result from cumulative aggregate exposure to acifluorfen and lactofen residues.

The EPA notes that there are no registered indoor or outdoor residential uses of lactofen, no registered indoor uses of acifluorfen, and that the registered outdoor residential uses of acifluorfen are not considered by the Agency to constitute a chronic exposure scenario. Thus, no non-dietary, non-occupational chronic exposure to acifluorfen or lactofen is expected, or is a factor in cumulative aggregate cancer risk.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— a. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of acifluorfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually for combined inter- and intra-species variability) and not the additional 10-fold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

b. *Developmental toxicity studies—Rats*. The maternal (systemic) NOEL was 90 mg/kg/day, based on decreased body weight at the Lowest Observed Effect Level (LOEL) of 180 mg/kg/day, the highest dose tested (HDT). The developmental (fetal) NOEL was 20 mg/kg/day, based on decreased fetal weight at the LOEL of 90 mg/kg/day.

Rabbits. Both the maternal (systemic) and developmental NOEL were 36 mg/kg/day at the HDT.

c. *Reproductive toxicity study*. In a 2-generation reproductive toxicity study in rats, both the parental (systemic) and reproductive (pup) NOEL were 1.25 mg/kg/day, based on decreased survival and an increased incidence of kidney lesions at the LOEL of 25.0 mg/kg/day.

d. *Pre- and post-natal sensitivity*. The toxicological data base for evaluating pre- and post-natal toxicity for acifluorfen is complete with respect to current data requirements. The available data indicate that no developmental or maternal toxicity was observed in rabbits at the highest dose tested (36 mg/kg/day).

In the developmental toxicity study in rats, an increased sensitivity to acifluorfen was seen in developing fetuses as evidenced by decreased fetal weights at the NOEL of 20 mg/kg/day (LOEL = 90 mg/kg/day). Maternal toxicity was observed at the highest dose tested (LOEL = 180 mg/kg/day) and was based on decreased body weight. Based on these findings, an additional UF (3X or 10X) would be justified in order to be protective of infants and children. However, a 100-fold UF has already been applied to the RfD NOEL of 1.25 mg/kg/day, and the developmental NOEL is more than 16-fold greater than the RfD NOEL. Therefore, an additional UF does not appear to be necessary.

There was no parental or reproductive toxicity observed in a 2-generation reproductive toxicity study in rats at doses up to 150 mg/kg/day (HDT).

e. *Conclusion*. The cumulative data discussed above indicates minimal concern for developmental or reproductive toxicity. Thus, these data

support use of the standard uncertainty factor of 100 and an additional safety factor is not needed to protect infants and children.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate dietary (food + water) exposure to acifluorfen will utilize ≤0.4% (up to ≈0.4% from food + ≈0.02% from water) of the RfD for any of the infant and children subgroups of the U.S. population.

The Agency estimated that the dietary (food) exposure to lactofen residues willl utilize <1% of the RfD (the RfD for lactofen is 0.02 mg/kg/day) for any of the infant and children subgroups of the U.S. population (based on percent crop-treated values for soybeans and anticipated residue estimates for soybeans, snap beans, and cottonseed). The dietary (water) exposure of children to lactofen was based on acifluorfen monitoring data, and estimated as <1% of the RfD. The chronic aggregate (food + water) dietary exposure contributed by lactofen tolerances is thus <2% (<0.0004 mg/kg/day) of the lactofen RfD (and corresponds to 3% of the acifluorfen RfD).

Cumulative (acifluorfen + lactofen) chronic aggregate (food + water) dietary exposure for infants and children is thus on the order of 3-4% of the RfD of acifluorfen.

There are no registered indoor residential uses of acifluorfen. EPA believes that the outdoor residential uses of acifluorfen do not constitute a chronic exposure scenario. Lactofen is not registered for residential uses. Therefore, residential exposure will not be a contributing factor to cumulative chronic aggregate exposure to infants and children.

EPA concludes that there is a reasonable certainty that no harm will result to infants and children from cumulative chronic aggregate exposure to lactofen and acifluorfen residues.

3. *Short- or intermediate-term risk.* There are outdoor residential uses of acifluorfen, and these may constitute a short- and/or intermediate-term exposure scenario, but the Agency currently lacks residential-related exposure data to complete a comprehensive residential risk assessment of acifluorfen. Based on the lack of an identified acute toxicological endpoint for acifluorfen, and the low (≈3-4%) percentage of the acifluorfen RfD occupied by cumulative (lactofen + acifluorfen) aggregate (food + water) dietary exposure for any of the infant and children subgroups of the U.S. population, in the best scientific judgment of EPA, short- and/or intermediate-term cumulative aggregate exposure of acifluorfen and lactofen to infants and children will not exceed the Agency's level of concern.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in rice and goats is adequately understood. Additional metabolism studies have been requested. At present, the residue of concern in plants and animals is considered to be as specified in 40 CFR 180.383 .

B. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC/ECD and GLC/MS) is available in the Pesticide Analytical Manual, Volume II, Methods 180.383 I and A, to enforce the tolerance expression of 40 CFR 180.383.

C. Magnitude of Residues

Combined residues of the sodium salt of acifluorfen and its regulated metabolites are not expected to exceed 0.1 ppm in/on lima beans, southern peas, or cowpeas as a result of use under this Section 18 program. According to Table 1 of the OPPTS Test Guidelines, Series 860, Residue Chemistry, 8/96, there are no processed commodities associated with lima beans, southern peas, or cowpeas. Cowpea seed, forage, and hay are the only livestock feedstuffs associated with this Section 18 action and, in the absence of residue data, their use for feed or forage is being restricted under this Section 18 program. For the purpose of this Section 18 program and its limited acreage, the EPA will prohibit the use of treated plants for feed or forage. Thus, secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this Section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for acifluorfen.

E. Rotational Crop Restrictions

Under this Section 18 use, in case of crop failure, only peanuts, soybeans, rice, lima beans, southern peas, or cowpeas may be immediately replanted. Further plantback restrictions, applying to crops without acifluorfen tolerances, are listed on the federal label, and are also to be followed under this Section 18 program.

VI. Conclusion

Therefore, the tolerance is established for the combined residues of the sodium salt of acifluorfen and its metabolites (the acid, methyl ester, and amino analogues) in or on lima beans, cowpeas, and southern peas at 0.1 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 23, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request 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 information that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300516] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408(l)(6) response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. Section 180.383 is amended as follows:

i. By designating the existing text as paragraph (a) and adding a heading.

ii. By adding paragraph (b).

iii. By adding the headings and reserving paragraphs (c) and (d).

Section 180.383, as amended, reads as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the herbicide sodium salt of acifluorfen and its metabolites (the corresponding acid, methyl ester, and amino analogues) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Cowpeas	0.1	December 31, 1998
Lima beans	0.1	December 31, 1998
Southern peas	0.1	December 31, 1998

(c) *Tolerances with regional restrictions.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–19668 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 62, No. 143
Friday, July 25, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–40–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time visual inspection to determine if all corners of the forward lower cargo doorjamb have been previously modified. This proposal also would require low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by fatigue cracks found in the fuselage skin and doubler at the corners of the forward lower cargo doorjamb. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by September 5, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners of the forward lower cargo doorjamb on Model DC–9 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Structural Inspection Document (SSID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doubler at the corners of the forward lower cargo doorjamb, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996. The service bulletin describes the following procedures:

1. For certain airplanes: Performing low frequency eddy current (LFEC) inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb;
2. For certain other airplanes: Contacting the manufacturer for disposition of certain conditions.
3. Conducting repetitive inspections, or modifying the corner skin of the forward lower cargo doorjamb and performing follow-on action LFEC inspections, if no cracking is detected;
4. Performing repetitive LFEC inspections to detect cracks on the skin adjacent to any corner that has been modified; and
5. Modifying any crack that is found to be 2 inches or less in length at all corners that have not been modified and performing follow-on repetitive LFEC inspections.

Accomplishment of the modification will minimize the possibility of cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require, for certain airplanes, LFEC inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD also would require a one-time visual inspection to determine if all corners of the forward lower cargo doorjamb have been previously modified. The FAA finds that the LFEC inspections described in the referenced service bulletin are dependent on whether the corners have been modified or not, and dependent on what service documents the operators used to accomplish the modification. The FAA finds that an initial one-time visual inspection is necessary to make such a determination.

Operators also should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Cost Impact

There are approximately 899 McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 622 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $37,320, or $60 per airplane.

Should an operator be required to accomplish the proposed LFEC inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $37,320, or $60 per airplane.

Should an operator be required to accomplish the proposed modification, it would take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $936, or $2,807 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,776 or $3,647 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 97–NM–40–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the forward lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: This AD is related to AD 96–13–03, amendment 39–9671, (61 FR 31009, June 19, 1996), and will affect Principal Structural Element (PSE) 53.09.001 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 48,000 total landings, or within 3,500 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the forward lower cargo doorjamb have been modified prior to the effective date of this AD.

(b) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb *have not been modified*, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996.

(1) If no crack is detected during the LFEC or x-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until paragraph (b)(1)(ii) of this AD is accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,500 landings.

(B) If the immediately preceding inspection was conducted using x-ray techniques, conduct the next inspection within 2,850 landings.

(ii) *Option 2.* Prior to further flight, modify the corners of the foward lower cargo doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of that modification, perform a LFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin. Repeat the LFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any LFEC or x-ray inspection required by this paragraph, repeat the LFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any LFEC or x-ray inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is found during any LFEC or x-ray inspection required by this paragraph and the crack is 2 inches or less in length: Prior to further flight, modify it in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a LFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the LFEC inspection required by this paragraph, repeat the LFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the LFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager Los Angeles ACO.

(3) If any crack is found during any LFEC or x-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb *have been modified*, but not in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb *have been modified* in accordance with DC–9 SRM or Service Rework Drawing, prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,500 landings after the effective date of this AD, whichever occurs later, perform a LFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996. Repeat the LFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any LFEC inspection required by this paragraph, repeat the LFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any LFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–19598 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–11]

Proposed Amendment of Class E Airspace; Gillette, Wyoming

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Gillette, Wyoming, Class E airspace. If amended,the airspace would provide additional airspace to fully encompass a revised instrument approach procedure at Gillette-Campbell County Airport, Wyoming. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 27, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–11, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–520.4, Federal Aviation Administration, Docket No. 97–ANM–11, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Gillette, Wyoming, to provide additional airspace to fully encompass a revised instrument approach procedure at Gillette-Campbell County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Gillette, WY [Revised]

Gillette-Campbell County Airport, WY
(Lat. 44°20′56″ N, long 105°32′21″ W)
Gillette VOR/DME
(Lat. 44°20′52″ N, long 105°32′37″ W)

That airspace extending upward from 700 feet above the surface within 6.1 miles east and 8.3 miles west of the Gillette VOR/DME 176° and 356° radials extending from 15.3 miles south to 16.1 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 44°47′00″ N, long. 106°22′32″ W; to lat 44°23′00″ N, long. 106°22′32″ W; to lat. 44°16′00″ N, long. 105°58′02″ W; to lat. 44°05′00″ N, long. 106°00′02″ W; to lat. 43°49′15″ N long. 106°09′32″ W; to lat. 43°39′00″ N, long. 106°00′02″ W; to lat. 43°39′00″ N, long. 105°09′02″ W; to lat. 44°08′00″ N, long. 105°09′02″ W; to lat. 44°01′00″ N, long. 104°51′02″ W; to lat. 44°30′00″ N, long. 104°41′02″ W; to lat. 44°42′19″ N, long. 105°33′58″ W; to lat 44°40′11″ N, long. 105°40′16″ W; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on July 3, 1997.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

FR Doc. 97–19689 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–26]

Proposed Modification of Class E Airspace; French Lick, IN, French Lick Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at French Lick, IN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway 8 has been developed for French Lick Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 29, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–26.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East

Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at French Lick, IN. This proposal would provide adequate Class E airspace for operators executing the NDB Runway 8 SIAP at French Lick Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 French Lick, IN [Revised]

French Lick Municipal Airport, IN
(Lat. 38°30′22″N, long. 86°38′13″W)
Oranj NDB
(Lat. 38°31′40″N, long. 86°31′40″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the French Lick Municipal Airport, and within 5.9 miles either side of the 255° bearing from the Oranj NDB extending from the 6.5-mile radius area to 6.9 miles southwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on July 1, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19691 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–22]

Proposed Establishment of Class E Airspace; Sauk Centre, MN, Sauk Centre Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Sauk Centre, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 32 has been developed for Sauk Centre Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 25, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Manuel A. Torres, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Sauk Centre, MN; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 32 SIAP at Sauk Centre Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with Instrument Flight Rules (IFR) procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Sauk Centre, MN [New]

Sauk Centre Municipal Airport, MN
(Lat. 45°42′24″ N, long. 94°56′00″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sauk Centre Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on June 24, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19690 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–28]

Proposed Modification of Class E Airspace; Norwalk, OH, Norwalk-Huron County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 28 has been developed for Norwalk-Huron County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–28.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Class E airspace at Norwalk, OH. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 28 SIAP at Norwalk-Huron County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with Instrument Flight Rules (IFR) procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(Lat. 41°14′41″N, long. 82°33′04″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.4-mile radius to 8.8 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on July 10, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19696 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–27]

Proposed Modification of Class E Airspace; Mason, MI, Mason Jewett Field

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Mason, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Mason Jewett Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–27.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Mason, MI. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 27 SIAP at Mason Jewett Field. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with Instrument Flight Rules (IFR) procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Mason, MI [Revised]

Mason Jewett Field, MI
(Lat. 42°33′57″N., long. 84°25′24″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Mason Jewett Field, excluding that airspace within the Lansing, MI, and Eaton, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on July 10, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19695 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–29]

Proposed Modification of Class E Airspace; Delaware, OH, Delaware Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 10 and a GPS SIAP to Runway 28 have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet Above Ground Level (AGL) is needed to contain aircraft executing the approaches. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 8, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–29.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposal Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Delaware, OH. This proposal would provide adequate Class E airspace for operators executing the GPS Runway 10 SIAP and the GPS Runway 28 SIAP at Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with Instrument Flight Rules (IFR) procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(Lat. 40°16′46″N., long. 83°06′22″W.)
Delaware NDB
(Lat. 40°16′41″N., long. 83°06′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Delaware Municipal Airport and within 2.6 miles either side of the 286° bearing from the Delaware NDB extending

from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on July 10, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–19694 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 854]

RIN: 1512–AA07

Proposals To Establish a Yorkville Highlands Viticultural Area and Realign the Southern Boundary of the Mendocino Viticultural Area (95F–020P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Mendocino County, California, to be known as ''Yorkville Highlands,'' and the extension of the southern boundary of the Mendocino Viticultural Area to coincide with the boundary of the proposed area. These proposals are the result of a petition filed by Mr. William J.A. Weir for the Yorkville Highlands Appellation Committee and a related petition filed by Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

DATES: Written comments must be received by September 23, 1997.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, *Attn: Notice No. 854.* Copies of written comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petitions

ATF has received a petition from Mr. William J. A. Weir of Weir Vineyards for the Yorkville Highlands Appellation Committee (''Yorkville Highlands petition''). The petition was signed by Mr. Larry W. Martz of Martz Vineyards, Inc., Mr. Frank Souzao of Souzao Cellars, Mr. Michael J. Page, of Mountain House Vineyard, Mr. Robert A. Vidmar of Vidmar Vineyard, and Mr. Edward D. Wallo, of Yorkville Vineyards. The petitioners represent both wineries and growers within the proposed area. The petitioners note the area includes historic vineyards dating from 1914 as well as newly established vineyards.

ATF has also received a related petition from Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance (''Mendocino petition''), requesting that the southern boundary of the existing Mendocino Viticultural Area be extended to coincide with the requested southern boundary in the Yorkville Highlands petition. The Mendocino Viticultural Area was established pursuant to T.D. ATF–178 on June 15, 1984 (49 FR 24711). The recent Mendocino petition incorporated the Yorkville Highlands petition by reference and stated that the proposed Yorkville Highlands southern boundary is appropriate for the Mendocino viticultural area as well.

These two proposals, if adopted, would result in the Yorkville Highlands area being entirely within the Mendocino area. Both areas would be entirely within Mendocino County, California, as is the existing Mendocino viticultural area.

The proposed new area consists of approximately 40,000 acres, of which approximately 70 are devoted to viticulture. There are seven growers and two wine producers within the proposed Yorkville Highlands area now, with two new growers planning vineyards and some existing growers planning to plant more vineyards. The proposed expansion of the Mendocino viticultural area would add approximately 10,000 acres to that area.

Evidence of Name

The Yorkville Highlands petitioners supplied the following evidence that the name of the proposed new area is locally and/or nationally known as referring to the area specified in the petition:

(a) A brochure published by the Mendocino Winegrowers Alliance entitled ''Mendocino. Real Farmers, Real Wine. On California's Redwood Coast'' which lists ''Yorkville Highlands'' among the County's wine growing areas. In the brochure, the area is described as extending northwest from the Mendocino-Sonoma County border along Route 128, a description

which fits the area proposed for designation.

(b) A map of ''Mendocino Wine Country'' published in ''Steppin' Out, California's Wine Country Magazine,'' volume XIII, issue 27, which includes the ''Yorkville Highlands'' area. Again, the area outlined on the map coincides with the boundaries requested by the petitioner.

Evidence of Boundaries

The Yorkville Highlands petitioners have defined the proposed area primarily by reference to the Sonoma-Mendocino county line and by straight lines drawn between benchmarks, mountain peaks, and other features found on the U.S.G.S. maps.

The proposed new area is within the North Coast viticultural area. If the Mendocino viticultural area is expanded as proposed, then the new area will be entirely within the Mendocino area as well. The proposed Yorkville Highlands area is bounded on the northwest by the Anderson Valley viticultural area, and surrounded by other viticultural areas less than five miles away. McDowell Valley lies to the northeast, Alexander Valley and Northern Sonoma lie to the southeast and south, and there is a new viticultural area under consideration to the southeast.

Geographical Features

According to the petitioners, the proposed new area, including the area under consideration for addition to the existing Mendocino viticultural area, share characteristics of topography, soil composition and climate which distinguish the proposed viticultural area from the surrounding areas. For an overview of the geographical features which set the area apart, the petitioners submitted letters from Mr. Mark Welch, President of the Mendocino County Farm Bureau, Mr. Glenn McGourty, Viticultural Farm Advisor & County Director, University of California Cooperative Extension, and Mr. Steve Williams, of A.V.V.S.

Mr. Welch stated that he believes the boundaries submitted reflect a unique and outstanding grape growing locale. He went on to say:

> The soils of the area are different from adjacent, recognized districts like the Anderson Valley, and the distinct micro climate offers warmer days, cool afternoon breezes and a substantial growing season for a low to mid region II.

Similarly, Mr. McGourty stated that the soils and climate of the proposed viticultural area are ''significantly different from surrounding grape growing areas, being high elevation and in an area where the coastal Douglas Fir forests meet the oak woodland forests more typical of interior Mendocino County.''

Mr. Williams stated he has been building and managing vineyards in the proposed ''Yorkville Highlands'' viticultural area for more than ten years. He notes that the proposed new area is different viticulturally from both the Anderson Valley viticultural area and the Hopland area of the Mendocino viticultural area. He gave the following details:

> The climate of the * * * area has days warmer than Anderson Valley but cooler than Hopland. The nights are cooler than both Anderson Valley and Hopland. This means many grape varieties can be grown in this area but will have a long ripening period which will greatly enhance fruit flavors and quality.
>
> In regards to soil the area also differs from [Anderson Valley] or Hopland. The * * * soils are thinner then [sic] Hopland but more fertile and varied than [Anderson Valley].

The petitioners provided the following evidence to support their claims:

Topography

According to the petitioners, the proposed ''Yorkville Highlands'' viticultural area lies generally along the headwaters of Dry Creek and Rancheria Creek. The petitioners state that the vineyards in the proposed ''Yorkville Highlands'' viticultural area are almost entirely above 800 feet in elevation. The petitioners describe the area as ''a continuous string of high benches and land troughs bordered by even higher ridges with Highway 128 running down the middle.'' The U.S.G.S. topographic maps submitted by the petitioners show the proposed area is a valley, with Highway 128 and the Rancheria and Dry Creeks running along the northwest-southeast axis of the area. This center line of the area is the lowest part, at approximately 800 feet, and the highest, in the area near the northern boundary, is over 3,000 feet.

Soil

The petitioners state that the soils in the proposed new viticultural area are rocky hill soils characterized by gravel and old brittle rock. According to the petitioners, these generally thin soils found on the high benches and land troughs of the proposed area stand in stark contrast to the generally very loamy clay soils found in the valleys and bottom lands dominating the neighboring approved viticultural areas. Soil types mapped by the U.S. Soil Conservation Service include: Bearwallow, Hellman, Cole Loam, Henneke, Montara, Hopland Loam, Squawrock, Witherell, Yorkville and Boontling. The petitioners note only one or two of these soil types are found in common with a neighboring viticultural area.

Climate

The petitioners state the climate in the proposed Yorkville Highlands viticultural area is influenced by marine air well over 50 percent of the time. The petition states:

> Almost every morning during the growing season, the moist marine fog is found on the high bench lands and land troughs which comprise the proposed viticulture area and connect the cooler Anderson Valley with the much warmer Alexander Valley. The trees on these bench lands are draped with the moss from this ocean air invasion and cooler climatic condition.

Unofficial heat summation data collected at the Weir Vineyards within the proposed area reflects a four year average of 3,060, compared to approximately 2,500 in Boonville and Philo to the northwest of the proposed area and 3,650 reported by the University of California Agricultural Extension Service in Cloverdale, to the southeast.

Average annual rainfall within the proposed area from 1961 through 1990, as measured by the Department of Water Resources, Eureka Flood Center at the Yorkville Station, was 50.55 inches. The Anderson Valley, to the northwest, receives an average of only 40.7 inches of rain per year.

Revised Mendocino Boundary

Concurrent with consideration of the Yorkville Highlands petition, ATF is considering a revision of the southern boundary of the Mendocino viticultural area. The existing southern boundary of Mendocino runs through the middle of the proposed area. A large triangular portion of the proposed area is outside of the Mendocino area while the other portion of the proposed area is within the Mendocino area. This revision has been proposed by both the Mendocino Winegrowers Alliance and the Yorkville Highlands petitioners.

In support of the boundary revision, the petitioners note that the bisection of the proposed Yorkville Highlands area by Mendocino leaves similar growing areas and conditions within a few miles to a few feet of each other on the opposite side of the Mendocino Boundary. Mr. Bruce E. Bearden, Farm Advisor, Emeritus, University of California Cooperative Exchange, stated that the existing boundary arbitrarily excludes some of the regions naturally associated with existing vineyards. Mr. Bearden further states that the revised

boundary would reunite the related soils and climates of the area.

Proposed Boundary

The proposed revision to the boundary of the Mendocino viticultural area is described in § 9.93. In addition, there is a typographical error in 27 CFR § 9.93(c)(11), which we propose to correct as part of this rulemaking.

The boundary of the proposed Yorkville Highlands viticultural area may be found on six United States Geological Survey (U.S.G.S.) maps with a scale of 1:24000. The boundary is described in § 9.157.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information: The principal author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.93 is amended by revising paragraph (c)(11), by revising paragraphs (c)(17) and (c)(18), and by adding new paragraph (c)(19) to read as follows:

§ 9.93 Mendocino.

* * * * *

(c) Boundaries. * * *

(11) Thence in a straight line in a northwest direction to the junction of Baily Gulch and the South Branch, North Fork of the Navarro River, located in Section 8, T.15N., R.15W.;

* * * * *

(17) Thence continuing in a straight line in a southerly direction to the southwest corner of Section 5, T. 12 N., R. 13 W., and the Mendocino County/Sonoma County line;

(18) Thence continuing in a straight line in a southeasterly direction to the intersection of the southwest corner of Section 32, T. 12 N., R. 11 W., and the Mendocino County/Sonoma County line;

(19) Thence following the Mendocino County/Sonoma County line in an easterly, northerly, and then an easterly direction to the beginning point.

Par. 3. A new § 9.157 is added to subpart C to read as follows:

§ 9.157 Yorkville Highlands.

(a) *Name.* The name of the viticultural area described in this section is ''Yorkville Highlands.''

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yorkville Highlands viticultural area are the following six U.S.G.S. topographical maps (7.5 minute series, 1:24000 scale):

(1) ''Gube Mountain, Calif.,'' provisional edition 1991.

(2) ''Big Foot Mountain, Calif.,'' provisional edition 1991.

(3) ''Cloverdale, Calif.,'' 1960, photoinspected 1975.

(4) ''Ornbaun Valley Quadrangle, Calif.,'' provisional edition, 1991.

(5) ''Yorkville, Calif.,'' provisional edition, 1991.

(6) ''Hopland, Calif.,'' 1960, photoinspected 1975.

(c) *Boundary.* The Yorkville Highlands viticultural area is located in Mendocino County, California. The boundary is as follows:

(1) The beginning point is Benchmark 680, located in Section 30, T. 12 N., R. 13 W., on the Ornbaum Valley quadrangle map;

(2) From the beginning point, the boundary proceeds in a straight line in a northeasterly direction to a point intersecting the North Fork of Robinson Creek and the Section 20, T. 13 N., R. 13 W.;

(3) The boundary then proceeds in a straight line in a southeasterly direction to the summit of Sanel Mountain, located at the southeast corner of Section 30, T. 13 N., R. 12 W., on the Yorkville quadrangle map;

(4) The boundary then proceeds in a straight line in a southeasterly direction until it reaches the southeast corner of Section 15, T. 12 N., R 11 W., on the Hopland quadrangle map;

(5) The boundary then proceeds south, following the eastern boundaries of Sections 22 and 27, T. 12 N., R 11 W., until it reaches the Mendocino-Sonoma County line on the Cloverdale quadrangle map;

(6) The boundary then follows the Mendocino-Sonoma county line west, south and west until it reaches the southwest corner of Section 32, T. 12 N. R. 11 W.;

(7) The boundary then diverges from the county line and proceeds in a northwesterly direction, traversing the Big Foot Mountain quadrangle map, until it reaches the southwest corner of Section 5, T. 12 N., R. 13 W. on the Ornbaun Valley quadrangle map;

(8) The boundary proceeds in a straight line in a northerly direction until it reaches the beginning point at Benchmark 680.

Approved: July 16, 1997.

John W. Magaw,

Director.

[FR Doc. 97–19610 Filed 7–24–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AE12

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1998–1999 Subsistence Taking of Fish and Wildlife Regulations

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1998–1999 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking will replace the wildlife regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1997-1998 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 1998. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section _____.24 of Subpart C).

DATES: Written public comments and proposals to change this proposed rule must be received no later than October 24, 1997. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change regulations contained in this proposed rule from September 9—October 17, 1997, at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on meetings.

ADDRESSES: Written comments may be submitted to the U.S. Fish and Wildlife Service. Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503. See **SUPPLEMENTARY INFORMATION** for locations of meetings and additional information on written comment procedures.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, U.S. Fish and Wildlife Service, Thomas H. Boyd, Office of Subsistence Management; telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Meeting Locations and Written Comment Procedures

The meetings on this proposed rule will be held at the following locations in Alaska:

Southeast Regional Council	Yakutat.
Southcentral Regional Council.	Anchorage.
Kodiak/Aleutians Regional Council.	Cold Bay.
Bristol Bay Regional Council	Togiak.
Yukon-Kuskokwim Delta Regional Council.	Hooper Bay.
Western Interior Regional Council.	McGrath.
Seward Peninsula Regional Council.	Nome.
Northwest Arctic Regional Council.	Noatak.
Eastern Interior Regional Council.	Dot Lake.
North Slope Regional Council	Barrow.

Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances. Length of the Regional Council meetings will be determined by the amount of work on each Regional Council's agenda. Written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C will be compiled and distributed for additional public review during early November 1997. A 30-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the public comment period. Comments on published proposals to change hunting and trapping and customary and traditional use determination regulations may be presented to the Regional Councils at their winter meetings; locations, dates, and times to be announced. The Federal Subsistence Board (Board) will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during April 1998.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

Written comments or proposed regulation changes may be submitted in writing to the address identified at the beginning of this rulemaking by October 24, 1997. Comments or proposals may also be presented at Regional Council meetings to be held from September 9—October 17, 1997.

The public is encouraged to use proposal forms to submit recommendations to the Board. Proposal forms may be obtained from the U.S. Fish and Wildlife Service at the address listed above. This is a mechanism by which the public can best submit their suggested changes to the Board. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members and on the basis of least harm to the subsistence user.

Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means. Proposals submitted to the Board should include the following information: (a) The name, address, and telephone number of the individual or organization submitting the proposal; (b) The section and/or paragraph of the proposed rule for which the change is being suggested; (c) A statement explaining why the change is necessary; (d) A proposed solution; (e) Suggested wording for the regulation addition or change; and (f) Any supporting information. Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in § _____.24, Subpart C and § _____.25, Subpart D, may be rejected.

Proposals for Changes Relating to Fish or Shellfish Regulations, and Changes to the Overall Program Will Not be Considered by the Board at this Time. Fish and shellfish regulations were extended through December 31, 1998, pending further development of a separate rulemaking process resulting from the consolidated ''Katie John'' litigation and petitions to the Secretaries regarding extended jurisdiction.

Following public distribution of proposals for changes to the 1998–1999 proposed regulations, a comment period will be provided to allow public review of those proposals that will be considered by the Board. A second series of Regional Council meetings will be held in February 1998, to assist in developing recommendations to the Board. Written comments on proposals may be submitted to the U.S. Fish and Wildlife Service before conclusion of the comment period which is presently

scheduled to end on January 9, 1998. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, April 1998. The public may provide additional oral testimony on specific proposals before the Board at that time.

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 (Departments) 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. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule for §§ _____.23–_____.25. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al.* v. *United States of America et al.* Therefore, to the extent that these regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanektok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the continuation of the proceedings in the consolidated ''Katie John'' litigation and a petition to the Secretaries of the Interior and Agriculture addressing jurisdiction in navigable waters, no attempt is being made to alter the fish and shellfish portions of the regulations (§§ _____.26 and_____.27) until final guidance has been received regarding the jurisdictional authority of the Federal government over navigable waters in general, and specifically with respect to the waters at issue in *Native Village of Quinhagak et al.* v. *United States of America et al.*

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for residents of the region to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Proposed Changes From 1997–1998 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. Regulations contained in this proposed rule will take effect on July 1, 1998, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1997–1998 Subparts C and D Final Rule served as the foundation for the 1998–1999 Subparts C and D proposed rule. The only changes in this proposed rule are modifications to the lynx seasons in Units 6, 7, 11, 12, 13, 15, 20, and 25 that were approved by the Board consistent with the ''harvest tracking stategy'' for lynx and changes in the wording regarding permits for muskox in Units 22 and 23.

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, published May 29, 1992) implemented the Federal Subsistence Management Program and included 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 appeared 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

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075, which expires 5/31/2000.

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 this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 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, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), 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.

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, such as ammunition, snowmachine, and gasoline dealers. 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.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million State wide.

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 potential takings of private property implications as defined 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.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Drafting Information: These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the 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; Ida Hildebrand, 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 recordkeeping requirements, Wildlife.

50 CFR Part 100

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

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are proposed to be 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 is proposed to continue 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.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § _____.24 is proposed to be revised to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this Part.

(1) *Wildlife determinations.*

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1 (C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Rural residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B)	Moose	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay.	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Rural residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6 (C) and (D)	Goat	Rural residents of Unit 6 (C) and (D).
6	Moose	No Federal subsistence priority.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area.	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay.	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9 (A) and (B)	Black Bear	Residents of Units 9 (A) and (B), and 17 (A), (B), and (C).
9 (A), (C) and (D)	Brown Bear	No Federal subsistence priority.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.

Area	Species	Determination
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9 (B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9 (A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16—26.
9 (A), (B), (C), & (E)	Beaver	Residents of Units 9 (A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11	Brown Bear	No Federal subsistence priority.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A)–(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cuttoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake.
12	Caribou	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13 (A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No Federal subsistence priority.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13 (A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.

Area	Species	Determination
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14 (B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14 (A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17	Black Bear	Residents of Units 9 (A) and (B), and 17 (A), (B), and (C).
17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17 (B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17 (A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.

Area	Species	Determination
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17 (B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9 (A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19 (C), (D)	Bison	No Federal subsistence priority.
19(A)	Brown Bear	Residents of Unit 19 (A), (D), and residents of Tuluksak, Lower Kalskag, and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19 (A) and (D), and residents of Tuluksak and Lower Kalskag.
19 (A) and (B)	Caribou	Residents of Unit 19 (A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19 (A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20 (A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.

Area	Species	Determination
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow, and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Units 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21 (A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk, and Takotna.
21(A)	Moose	Residents of Units 21 (A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21 (B) and (C)	Moose	Residents of Unit 21 (B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22 (C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.

Area	Species	Determination
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, For Yukon, Kaktovik and Venetie.
25 (B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
KOTZEBUE-NORTHERN AREA—Northern District	All finfish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND—PORT CLARENCE AREA	Salmon	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.

Area	Species	Determination
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district	Salmon	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage	Salmon	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage	Salmon	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district	Salmon and other freshwater finfish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict.	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon and Dolly Varden char	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon and Dolly Varden char	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon and Dolly Varden char	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon and Dolly Varden char	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.

Area	Species	Determination
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden char, and steelhead trout.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon and Dolly Varden char	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon and Dolly Varden char	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Sockeye salmon	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon and Dolly Varden char	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, smelt and Dolly Varden char.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers.	Salmon and smelt	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet. Hai of Haines, excluding residents in the drainage of Excursion Inlet.

(b) [Reserved]

Subpart D—Subsistence Taking of Fish and Wildlife

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § _____.25 is proposed to be revised to read as follows:

§ _____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading ''black bear bait station'' that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraphs (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § _____.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § _____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, no person may

possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(1) Any wolf taken in Unit 2 must be sealed on or before the 30th day after the date of taking.

(2) The radius and ulna of the left foreleg must remain naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or

trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31.
	Mar. 15–ay 31.
Deer:	

Harvest limits	Open season
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit.	Sept. 15–Oct. 15.
Remainder of Unit 1(B)	No open season.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit.	Sept. 15–Oct. 15.
Remainder of Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1 (A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C)The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the

recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer: 4 deer; however, no more than one may be an antlerless deer. Antlerlss deer may be taken only during the period Oct. 15–Dec. 31	Aug. 1–Dec. 31
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Dec. 1–Mar. 1.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	Oct. 15–Oct. 31.

Harvest limits	Open season
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting	
Remainder of Unit 3—2 antlered deer	Aug. 1–Nov. 30.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only	Sept. 15–Oct. 15.
Remainder of Unit 3	No open season.
Coyote: 2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island: No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations:

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) Chichagof Island is closed to the use of any motorized land vehicle for the taking of marten, mink, and weasel.

Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21′ W. long.), to Rodgers Point (57°35′ N. lat., 135°33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34′ N. lat., 135°25′ W. long.), to the entrance of Gut Bay (56°44′ N. lat. 134°38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1—Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a State metal locking tag; no State metal locking tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting;

(D) The taking of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, is authorized in Units 1–5 provided that:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no

more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6 (A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.

Harvest limits	Open season
Unit 6(D) (subareas RG242, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only.	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	
Unit 6(D) (subareas RG243 and RG245)—The taking of goats is prohibited on all public lands	No open season.
Coyote:	
Unit 6 (A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Remainder of Unit 6(C)—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6 (A), (B) and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Remainder of Unit 6(C)—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter:	
Unit 6(D)—That portion enclosd by a line extending from the Unit 6 boundary at the head of Kings Bay northeast along the center of Kings Bay and Port Nellie Juan, east to Pt. Eleanor, southeast to Little Smith Island, southwest along the center of Icy Bay, and west along Tiger Glacier to the Unit of Unit 6(D) boundary.	No open season.
Unit 6—Remainder: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7, that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10–Sept. 20.
Unit 7, Remainder	No open season.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—That portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	
Unit 8—That portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—That portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested

animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek;

(C) A firearm may be used under a trapping license to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(D) In Unit 9(B), Lake Clark National Park and Preserve only, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(E) The taking in Unit 9(B) by residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth of up to a total per regulatory year of 10 bull moose among the communities is allowed for ceremonial purposes, under the terms of a Federal registration permit. Bull moose may be taken from July 1 through June 30. Permits, available to all 5 communities, will be issued until all 10 permits are used to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B)–1 bear every four regulatory years	Oct. 1–Oct. 21. (odd years only); May 10–May 25 (even years only).
Unit 9(E)–1 bear by Federal registration permit or State harvest tag	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)–4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C)–4 caribou; however, no more than 1 may be a cow, no more than 2 caribou may be taken Aug. 10–Nov. 30, and no more than 1 caribou may be taken per calendar month between Dec. 1–Mar. 31.	Aug. 10–Mar. 31.
Unit 9(B)–5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—that portion southwest of the headwaters of Fireweed and Blueberry Creeks (north of Mt. Veniaminof) to and including the Sandy River drainage on the Bristol Bay side of the Alaska Peninsula; and that portion south of Seal Cape to Ramsey Bay on the Pacific side of the Alaska Peninsula divide is closed to all hunting of caribou.	No open season.
Remainder of Unit 9(E)–4 caribou	Aug. 10–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9–1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)–1 antlered bull	Sept. 1–Sept. 15.
Unit 9(B)–1 antlered bull	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)–1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)–1 antlered bull	Sept. 1–Sept. 20. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 9(B)–40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Remainder of Unit 9–40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.

Harvest limits	Open season
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands.

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only	No open season.
Remainder of Unit 10—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou:	
Unit 11—Mentasta herd—1 bull by Federal registration permit only. Federal public lands are closed to the taking of caribou except to the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta, and Tazlina. Up to 15 permits may be issued.	Aug. 1–Mar. 31.
Unit 11—Remainder	No open season.
Sheep: 1 sheep	Aug. 10–Sept. 20.
Moose: 1 antlered bull	Aug. 25–Sept. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 20–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River, east of the Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 30.
Unit 12—Remainder—1 antlered bull; however during the Aug. 20–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Jan. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.

Harvest limits	Open season
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Jan. 5–Mar. 31.
Sheep: Unit 13–excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	

Harvest limits	Open season
Unit 13(E)–1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 1–Sept. 20.
Unit 13—Remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Oct. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation, are closed to the subsistence taking of wildlife;

(B) The Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 14 (A) and (C)—1 bear	July 1–June 30.
Brown Bear: Unit 14(A)—1 bear every four regulatory years	Sept. 15–Oct. 10. May 1–May 25.
Coyote: Unit 14 (A) and (C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day	July 1–June 30.
Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession	Aug. 10–Mar. 31.
Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver:	
Unit 14(A)—30 beaver per season	Nov. 10–Apr. 30.

Harvest limits	Open season
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28
Wolverine: No limit	Nov. 10–Feb. 28.

(15) *Unit 15*. (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1—March 1 by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15 Remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A)—Skilak Loop Wildlife Management Area No open season..	
Unit 15 (B) and (C)–1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)–20 per day, 40 in possession	Aug. 10–Mar. 31
Unit 15(C)–20 per day, 40 in possession	Aug. 10–Dec. 31

Harvest limits	Open season
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier	No open season
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter:	
Unit 15 (A), (B)—No limit	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: Unit 15 (B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 16(B)–1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B) and 17(C)—1 bear every four regulatory years	Sept. 10–Oct. 10 April 15–May 25.
Caribou:	
Unit 17(A)—that portion west of the Togiak River, Togiak Lake, Izavieknik River, Upper Togiak Lake, and south to Cape Newenham—2 caribou.	Season to be opened by announcement of the Togiak National Wildlife Refuge Manager between Aug. 1–Mar. 31.
Unit 17 (A) and (C)—that portion of 17 (A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Aug. 31. Dec. 1–Mar. 31.
Unit 17 (B) and (C)—that portion of 17(C) east of the Wood River and Woood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 17(A), remainder and 17(C), remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season, harvest limit, and hunt area to be announced by the Togiak National Wildife Refuge Manager between Aug. 1–Mar. 31.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 10 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 10.
Remainder of Unit 17(B)—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 15–Dec. 31. During the period Sept. 1–Sept. 10 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 10. Dec. 15–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 10 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 10.
Remainder of Unit 17(C)—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 15–Dec. 31. During the period Sept. 1–Sept. 10 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 10. Dec. 15–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1—Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 17–40 beaver per season	Nov. 10–Feb. 28.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Mink and Weasel: No limit	Nov. 10–Mar. 31.
Muskrat: No limit	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan.'' The season will be closed when the total harvest reaches guidelines as described in the approved ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan''.	Season to be announced by the Yukon Delta National Wildlife Refuge Manager between Aug. 25 and Mar. 31.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—Goodnews River and Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 19 (A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear	Sept 1–May 31.
Remainder of Unit 19 (A), (B), and (D)—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Aug. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	

Harvest limits	Open season
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Remainder of Unit 19(A)—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)–1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit.	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit.	Nov. 1–Feb. 28.
Marten: No limit.	Nov. 1–Feb. 28.
Mink and Weasel: No limit.	Nov. 1–Feb. 28.
Muskrat: No limit.	Nov. 1–June 10.
Otter: No limit.	Nov. 1–Apr. 15.
Wolf: No limit.	Nov. 1–Mar. 31.
Wolverine: No limit.	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the

Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 20—except Unit 20(E)—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a combined State/Federal harvest quota of 150 for the Fortymile herd has been reached.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1–Sept. 20.
Remainder of Unit 20(B)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980–1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Remainder of Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.

Harvest limits	Open season
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 30.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Remainder of Unit 20(F)—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Remainder of Unit 20—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20 (A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 1–Feb. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30
Remainder of Unit 20—No limit	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1;

(C) The taking of up to three moose per regulatory year by the residents of Units 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three-moose limit is not cumulative with that permitted by the State;

(D) The taking of up to three moose per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three-moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21 (A), (B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River: 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd): 5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 10–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21 (B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; moose may not be taken within one-half mile of the Yukon River during the February season. During the Sept. 1–Sept. 25 season a State registration permit is required.	Sept. 1–Sept. 25. Feb. 1–Feb. 10.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 12 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 21(E)—No limit	Nov. 1–June 1.
Remainder of Unit 21—No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.

Harvest limits	Open season
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations:

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by residents of Unit 22(A) only	Sept. 1–Oct. 31. Apr. 15–May 25.
Unit 22(B)—1 bear by residents of Unit 22(B) only	Sept. 1–Oct. 31. Apr. 15–May 25.
Unit 22(C)	No open season.
Remainder of Unit 22—1 bear every four regulatory years	Sept. 1–Oct. 31. Apr. 15–May 25.
Caribou: Unit 22 (A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 antlered bull; however, the period of Dec. 1–Jan. 31 is restricted to residents of Unit 22(A) only	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22 (D) and (E)—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The hunt in Unit 22(D) will be closed when 8 bulls (one-half from National Park Service lands and one-half from Bureau of Land Management lands) have been taken. The hunt in Unit 22(E) will be closed when 9 bulls have been taken.	Sept. 1–Jan. 31.
Remainder of Unit 22	No open season.
Beaver:	
Unit 22 (A) and (B)—50 beaver	Nov. 1–June 10.
Unit 22(D)—50 beaver	Nov. 1–Apr. 15.
Unit 22 Remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten: Unit 22(A)and 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22 Remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.

Harvest limits	Open season
Trapping	
Beaver:	
Unit 22 (A) and (B)—50 beaver	Nov. 1–June 10.
Unit 22 (C), (D), and (E)—50 beaver	Nov. 1–Apr. 15.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 23;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1–Jun. 10.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—that portion west of Howard Pass and the Aniuk, Cutler and Redstone Rivers	No open season.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Remainder of Unit 23—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit only. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. The hunt will be closed when 6 bulls have been taken.	Sept. 1–Jan. 31.
Remainder of Unit 23	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.

Harvest limits	Open season
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Remainder of Unit 23—30 beaver	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit	Sept. 1–May 31.
Caribou:	

Harvest limits	Open season
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 24—that portion within the Gates of the Arctic National Park—Anaktuvuk Pass residents only—commnity harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area.

The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area; that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Caribou and moose may be taken from a boat under power in Unit 25.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou:	
Unit 25 (A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Remainder of Unit 25(B)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession.	
Unit 25(C)	Apr. 16–Oct. 31. No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
Remainder of Unit 25—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25(C)—25 beaver	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine:	Nov. 1–Feb. 28.
Unit 25(C)—No limit.	
Remainder of Unit 25—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Caribou may be taken from a boat under power in Unit 26;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26 (B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	

Harvest limits	Open season
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the the Killik River are closed to the the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
Not more than 5 caribou per regulatory year may be transported from Unit 26 except to the community of Anaktuvuk Pass	
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep	Aug. 1–Apr. 30.
Unit 26 (A) and (B)—that portion within the Gates of the Arctic National Park—Anaktuvuk Pass residents only—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River	No open season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26 (A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1—Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.
Remainder of Unit 26	No open season.
Muskox: Unit 26(C)—1 bull by Federal registration permit only; up to 15 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Sept. 15–Mar. 31.
Coyote: 2 coyotes. Sept. 1–Apr. 30.	
Fox, Arctic (Blue and White Phase): 2 foxes. Sept. 1–Apr. 30.	
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26 (A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves.	Aug. 10–Apr. 30.
Wolverine: 5 wolverine.	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit Nov. 1–Apr. 15.	
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: June 26, 1997.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

Dated: July 1, 1997.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5862–5]

Deletion of a Site From the National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Frit Industries Superfund Site from the National Priorities List; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (''EPA''), Region 6, announces its intent to delete the Frit Industries Superfund site (''Site'') located in Walnut Ridge, Arkansas, from the National Priorities List (''NPL'') and requests public comment. The NPL, a list of sites EPA evaluates for priority cleanup of hazardous wastes, is found in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') which is 40 CFR part 300, Appendix B. EPA promulgated the NCP pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''). The EPA and the State of Arkansas propose this deletion under the terms of a policy published in the **Federal Register** on March 20, 1995. In

this policy EPA announced that, consistent with NCP criteria for deletion of sites from the NPL, the Agency would delete sites if corrective actions were proceeding pursuant to the Deletion Policy for Resource Conservation and Recovery Act, (''RCRA''). The EPA, in consultation with the Arkansas Department of Pollution Control and Ecology has determined that all appropriate RCRA response activities conducted at the site to date and scheduled in the future are enforceable and have been and will remain protective of public health and the environment. Moreover, that this deferral to RCRA corrective authorities is appropriate.

DATES: The EPA will accept comments concerning its proposal for deletion on or before August 25, 1997.

ADDRESSES: Comments should be mailed to: Mr. Donn R. Walters, Community Relations Coordinator, U.S. EPA, Region 6 (6SF-P), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508 or (214) 665–6483.

In accordance with 40 CFR 300.425(e)(4)(iii) copies of the information supporting the proposed deletion are in the following repositories:

Felix Goodson Library, Attention: Mrs. Marilyn Goodwin, Librarian: Williams Baptist College, Walnut Ridge, Arkansas 72476, (501) 886–6741 Call First on Hours Open, Variable (Non-College Session)

General—Open Monday to Friday 9 a.m.–4 p.m. (When College is in Session)

Monday through Thursday 8 a.m. to 10 p.m.

Friday 8 a.m. to 5 p.m.

Saturday 10 a.m. to 12 Noon and 1 p.m. to 4 p.m.

Sunday 1 p.m. to 5 p.m.

U.S. EPA, Region 6, Library (6MD–II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427, Hours of Operation: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays

Arkansas Department of Pollution Control and Ecology, Attn: Mr. Clark McWilliams, RCRA State Project Manager, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682–0850. Hours of Operation: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, P.E., Remedial Project Manager (6SF–AP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 665–8521.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

The Environmental Protection Agency (''EPA'') Region 6 announces its intent to delete the Frit Industries Site from the National Priorities List (''NPL''), 40 CFR part 300, appendix B, and requests comments on this deletion. The EPA will accept comments on the deletion of this Site for thirty days after publication of this notice in the **Federal Register**.

The NPL is a list of sites that EPA evaluates for priority cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.* Listing of a site on the NPL does not, itself, create, alter or revoke any individual rights or obligations under CERCLA, or any other law. The NPL is designed primarily for information purposes and to assist Agency management. Sites on the NPL may be remediated using the Hazardous Substances Superfund (''Superfund'' or ''Fund'') established by section 9507 of the Internal Revenue Code of 1986. Use of this fund for cleanup of hazardous substances is governed by section 111 of CERCLA, 42 U.S.C. 9611, and implementing regulations.

As a general matter, deletion of the Frit Industries Site from the NPL will clarify that Arkansas Department of Pollution & Ecology, Office of Resource Conservation and Recovery Act (''RCRA'') Programs will have primary responsibility for ensuring that the hazardous wastes released at the Site are appropriately remediated. Notwithstanding any such deletion of this Site from the NPL, in the event that conditions at this Site warrant additional remedial corrective action, this Site remains eligible for Fund-financed remedial action. Pursuant to section 300.425(e)(3) of the NCP, 40 CFR 300.425(e)(3): ''All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action.

Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the [Hazard Ranking System].'' Therefore, deletion of this, or any other, site from the NPL does not preclude eligibility for subsequent Fund-financed remedial action if future conditions warrant such action.

Section II of this notice summarizes the criteria for deleting sites from the NPL. Section III summarizes the procedural steps EPA takes prior to deleting a site from the NPL. Section IV discusses the Frit Industries Site and explains how the Frit Industries Site meets the deletion criteria.

II. NPL Deletion Criteria

The National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, establishes the criteria the Agency uses to delete sites from the NPL. Section 300.425(e) of the NCP, 40 CFR 300.425(e), provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the appropriate state, whether the following criteria have been met:

(I) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Consistent with Sec. 300.425(e) of the NCP, 40 CFR 300.425(e), EPA proposes deletion of the Frit Industries Site because, as explained further below, no further CERCLA response is appropriate. This determination is based on a new policy that EPA has adopted for implementation of the NPL deletion criteria. This new policy, entitled ''The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities,'' was published in the **Federal Register** on March 20, 1995 (60 FR 14641). This new policy sets forth the following criteria and their general application for deleting RCRA facilities from the NPL:

1. If evaluated under EPA's current RCRA/NPL deferral policy (which refers to the policy in effect at the time the deletion decision is made. As past **Federal Register** notices demonstrate, the RCRA/NCP deferral policy has changed, and may continue to change based upon the Agency's continued evaluation of how best to implement the statutory authority of RCRA and CERCLA), the site would be eligible for deferral from listing on the NPL;

2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions;

3. Response under RCRA is progressing adequately; and

4. Deletion would not disrupt an ongoing CERCLA action.

Under this new policy, two types of sites may be eligible for deletion: (1) Sites that would be eligible for deferral under current deferral criteria, but were not deferred because the deferral policy at the time of listing was different; and (2) sites that were not eligible for deferral when listed, but now may be eligible because of changed conditions at the site (e.g., the site is now in compliance with a corrective action order). For facilities within the second category, the Agency reviews the original listing rationale together with current information to ascertain whether conditions at the site have changed sufficiently to warrant deletion from the NPL.

III. Deletion Procedures

Prior to deleting a site from the NPL, 40 CFR 300.425(e) requires that EPA provide the appropriate state with thirty (30) working days to review the proposed notice of intent to delete. After providing the appropriate state authorities with such opportunity for review, EPA must next provide the public with a minimum of thirty (30) calendar days to provide comments to the appropriate EPA Region. Prior to deleting a site from the NPL, EPA must receive concurrence from the appropriate state authorities. Additionally, EPA must respond to each significant comment and any significant new data submitted during the public comment period. A deletion occurs when the Regional Administrator places a notice of final deletion in the **Federal Register**. Generally, the NPL will reflect deletion in the final update following deletion. After the notice of final deletion is published, EPA is required to place the final deletion package in a local information repository. As mentioned in Section I (Introduction) of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

With respect to this notice of intent to delete, EPA has provided the Arkansas Department of Pollution Control and Ecology (ADPC&E) with a thirty (30) working day period for review and comment. The ADPC&E has provided EPA Region 6 with its concurrence on this notice of intent to delete. Before making the final decision as to whether to delete the Frit Industries Site from the NPL, EPA Region 6 will respond to each significant comment and any significant new data submitted during the public comment period in a Responsiveness Summary. In addition to this notice of intent to delete, EPA Region 6 has published a notice of availability of this notice of intent to delete in a major local newspaper and has placed copies of documents supporting this notice in an information repository at or near the Frit Industries Site. After the public comment period has closed, copies of the Responsiveness Summary will be made available to interested parties by the EPA Region 6. In the event that EPA issues a notice of final deletion for the Frit Industries Site, EPA Region 6 will place the final deletion package in the local repository.

IV. Basis for Intended Site Deletion

The following summary provides the EPA's rationale for the intention to delete the Frit Industries Site (''Site'') from the NPL.

A. Site Background

Frit Industries, Inc., has operated a micronutrient fertilizer additive manufacturing facility on approximately 22 acres of land leased from the City of Walnut Ridge, Arkansas, from 1973 to the present. In 1979, a major on-site fire in a storage building resulted in contaminants being released by air emissions as well as surface and ground water runoff. The incident focused public attention and resulted in a site evaluation. The site was evaluated by EPA with a HRS composite package score of 39.47. This score resulted in the site being placed on the NPL on November 24, 1982.

Frit Industries had an electric arc furnace and brass mill baghouse materials on site from 1973 to 1987 with hazardous waste K061 (emission control dust/sludge from the primary production of steel in electric furnaces), D006 (cadmium), and D008 (lead); this placed the site under the Arkansas State RCRA program. The lead agency, the ADPC&E, determined that three unit areas of the site are subject to regulation as hazardous waste management facilities in accordance with applicable regulations promulgated in the Arkansas Hazardous Waste Management Act, A.C.A. Section 8–7–214, and the Arkansas Hazardous Management Code.

An Administrative Order On Consent (AOC), Document Number CERCLA VI–1–83, was issued pursuant to section 106(a) of CERCLA, 42 U.S.C. 9606(a), Executive Order 12316, August 20, 1981, and 46 Federal Regulation 42237. This was dated, entered, and effective February 3, 1983, between Frit Industries, Inc., and the USEPA. The order was divided into three sections requiring action: Surface Water, Ground Water, and Substances Stored on Site. Considerable work and progress had already been completed on many of the items addressed in the order before the effective date of the order. The investigations and actions that were required by the CERCLA Administrative Order were completed in August 1989. Mr. Carl Schauble, Executive Vice President of Frit Industries documented completion of the AOC and requested the Frit Industries facility be removed from the NPL.

Pursuant with 40 CFR 272.201, section 3006(b) of RCRA, 42 U.S.C. 6926(b), the lead agency for Frit Industries is the Arkansas Department of Pollution Control and Ecology (ADPC&E).

As the result of an appeal of a Final Closure Plan (May 1989), which was approved with modifications by the State of Arkansas (ADPC&E) on February 28, 1990, Frit Industries, Inc., entered into an agreement with the ADPC&E, by signing a Consent Administrative Order (CAO) LIS No. 91–161. The CAO required a facility investigation (FI) of the site. On November 4, 1991, Frit Industries employed American Environmental Engineering of Leeds, Alabama, (Engineer) to conduct the FI and to prepare a report of the finding of the investigation.

In the FI Report, section 3, Source Characterization, the Engineer identifies fourteen Solid Waste Management Units (SWMU's). These are listed with history and status as follows:

SWMU #1—Granulated Facility Storage Unit (160′x120′ Bldg.) The granulated storage building was built by the U. S. Army Corps of Engineers in the early 1940's. This area was used during and after World War II to perform maintenance on aircraft, clean engines, and to store and repair batteries. Historical documents reveal problems with soil contamination from those operations. This facility was used by all of the previous lessees and Frit Industries. Electric arc furnace dust was stored in the facility in 1973 when Frit Industries first began operations. This building was demolished and decontaminated between September 1988 and March 1989. The current Closure Action is pending the State's RCRA scheduled CAO action items.

SWMU #2—Unidentified Depression—Historical documents confirm SWMU #2 was not constructed or operated as a surface water impoundment by Frit Industries, rather it is a site low point (ponding area) of the facility yard.

SWMU #3—Unidentified Pond—former surface water impoundment area. The area in which SWMU #3 is

located is the general area where Texas Railway and Equipment Company and Aircraft Conversion Company (TRECO/ACC) operated an aluminum recovery smelter during the period 1946 to 1948. This recovery operation consisted of the scrapping and smelting of surplus aircraft from World War II. Swindle Field, which included the current Frit Industries facility, was estimated to have processed 5,000 to 10,000 airplanes. Debris from this operation litters the top soil of the region south of the Frit facility and west of the Municipal Airport runway. The area, which was closed in 1982, covers ⅓ of an acre.

SWMU #4—Zinc Sulfate Storage—This unit was also within the area of the post-World War II smelting operation, and it was at this location where the U.S. Army Air Corps stored aviation fuel in 50,000 gallon above-ground storage tanks, which were documented to have leakage problems. The Zinc Sulfate Storage area is a unit that was used between 1977 and 1989 to store brass mill baghouse dust. It was built of corrugated steel on a 36′ x 80′ concrete slab. The closure plan for the Zinc Sulfate facility was prepared by NOVA Environmental Services. The plan was approved by the State of Arkansas (ADPC&E) on February 28, 1990. The facility was partially closed and dismantled in 1990.

SWMU #5—Primary Pond—This pond was constructed in 1980 to contain and recycle site storm water runoff in the immediate area of the zinc sulfate facility. Closure activity consisted of using a new lined pond constructed under SWMU #7. The pond was closed October 27, 1986.

SWMU #6—Surge Pond—This was a former unlined surface impoundment from 1984 until its closure approval by State of Arkansas (ADPC&E) in 1993.

SWMU #7—Overflow Pond—The overflow pond is adjacent to the surge pond and receives effluent from the surge pond. The pond was constructed with a synthetic geotextile liner in 1984 and is not a RCRA unit. This pond provides flow equalization to the waste water treatment plant. The overflow pond replaces two smaller ponds identified as 7a and 7b which were previously located between the southwestern one-half of the present-day overflow pond. The smaller ponds were the former settling and neutralization ponds that functioned to settle solids and adjust water pH used for super-phosphate production. The production of this product and use of these ponds was discontinued in 1973.

SWMU #8—Alleged Dump Site—An alleged pesticides dumpsite was located south of the surge and overflow ponds.

This site was investigated by EPA during a visual site investigation on December 11 and 12, 1986, but the location could not be identified during this investigation. An EM–31 Conductive Survey for buried drums was completed by ADPC&E and no drums were detected or found.

SWMU #9—Waste Water Treatment Plant—The waste-water treatment plant is located between the overflow pond and the employee change house. This facility operates under a National Pollutant Discharge Elimination System (NPDES) Permit and the outfall is located at the southwest corner of the site. Construction of the treatment plant was completed in September 1984 and the plant began operation the following month. The filter cake generated by the treatment plant is recycled into Frit Industries micronutrient production process.

SWMU #10—Product Storage Warehouse—The product warehouse is located in the central portion of the site, east of the overflow pond on the southeast side of Avenue B. A fire destroyed a portion of the former product storage building in the warehouse area on February 18, 1979. A new warehouse was then constructed and continues to be used for storing raw materials, finished products, and packing materials used at the site.

SWMU #11—Acid Cutting Pits for Sulfuric Acid—This unit consisted of former pits used to dilute or cut sulfuric acid for use in the manufacture of superphosphates. These pits were located east of the overflow pond on the southeast side of Avenue B. In 1954 the superphosphate plant was constructed by Spencer Chemical Company and ArkMo Plant Food Company. When Frit Industries started operations at the site in 1973, the superphosphate production plant was shut down and dismantled. Final Closure action is pending soils sampling and ground water results; these operations are scheduled in the three listed RCRA activities.

SWMU #12—Fire Water Pond—This pond was constructed in 1971 at the plant entrance, northwest of Avenue B and northeast of Mill Street in the northern portion of the site. The pond is used to collect storm water overflow; runoff goes to SWMU #7 and SWMU #9.

SWMU #13—Original Containment Area—This storage area consists of the original containment area used to store raw materials; however, TRECO/ACC operated the aluminum recovery smelter of the airplane demolition (see SWMU #3 above) in this immediate area.

SWMU #14—Former Waste Pile. These materials were removed to a landfill near Paragould, Arkansas. No hazardous waste or constituents are known or have been documented to be present in this material.

Under this RCRA closure SWMU 1, SWMU 4, SWMU 5 , SWMU 6 and SWMU 11 are analyzed compositely to determine how these units impact ground water and it will be on a site-wide basis. Ground water and the other site medias of surface water, and air, will be addressed within the scheduled eminent major submittals namely, the Baseline Risk Assessment, the identification and development, evaluation, justification of Corrective Measure Alternatives, and Corrective Measure Implementation.

B. Documentation That the Frit Industries Site Meets RCRA Deferral Criteria Set Forth in EPA's March 20, 1995, Policy

1. If evaluated under EPA's current RCRA/NPL deferral policy, the Site would be eligible for deferral from listing on the NPL.

At the time of the NPL listing, the Site posed a threat to human health and the environment that was not being addressed under either CERCLA or RCRA corrective action authorities. At that time, EPA determined that the most expeditious way to address the contamination at the Site was through the use of CERCLA authorities. Since that determination, Frit Industries and ADPC&E on February 28, 1990, entered into a RCRA CAO LIS No. 91–161 and the order has been addressing all of the contamination at the Site pursuant to section 3008(h) of RCRA. Frit Industries fulfilled the conditions of the RCRA CAO and is currently in compliance with the Order. Consequently, if this Site were evaluated for NPL listing under the current conditions, the Site would qualify for deferral to RCRA.

2. The CERCLA Site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions.

As described previously, EPA and Frit Industries entered into a RCRA CAO, pursuant to section 3008(h) of RCRA, on February 3, 1983. Under the terms of that AOC, Frit Industries was required to complete an on-site and off-site investigation of the nature and extent of the release of hazardous wastes from the Site and to conduct a study to evaluate various cleanup alternatives. Frit Industries subsequently fulfilled the conditions of this AOC.

As also described previously, ADPC&E and Frit Industries entered

into a RCRA CAO, pursuant to section 3008(h) of RCRA, on February 28, 1990. The 1990 RCRA CAO will remain in effect until such time when ADPC&E determines that the terms of this order have been satisfied. Frit Industries has been in compliance with the RCRA CAO. All known groundwater contamination is being addressed through ADPC&E and EPA's exercise of its corrective action authorities pursuant to RCRA.

3. Response under RCRA is progressing adequately.

Corrective action is progressing satisfactorily under the RCRA CAO, as described above. There has been no history of protracted negotiations due to lack of cooperation. See 60 FR 14642, 14643 (March 20, 1995).

4. Deletion would not disrupt an ongoing CERCLA action.

The EPA has received the following concurrence from ADPC&E: ''The ADPC&E concurs in the decision to delete the site from the NPL, but reserves all of its rights, abilities and authorities to address contamination at the site and to pursue responsible parties regarding this contamination.''

The EPA concludes that this Site meets the criteria under the new NPL deletion policy and announces its intention to delete the Site from the NPL.

The EPA believes it is appropriate to delete sites from the NPL based upon the deferral policy to RCRA under these established circumstances. Deletion of this site from the NPL to defer it to RCRA Subtitle C corrective action authorities avoids possible duplication of effort and the need for Frit Industries to follow more than one set of regulatory procedures. Moreover, EPA and the State of Arkansas (ADPC&E) have determined that remedial actions conducted at the site to date and scheduled in future under RCRA actions have been and will remain protective of public health, and the environment.

Dated: June 30, 1997.

Approved By:

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–19396 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5862–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Union Pacific Railroad Sludge Pit Site from the National Priorities List Update: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Union Pacific Railroad (UPRR) Sludge Pit Site in Pocatello, Idaho from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Idaho Division of Environmental Quality (IDEQ) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before August 25, 1997.

ADDRESSES: Comments may be mailed to: Deborah J. Yamamoto, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL–113, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the UPRR Sludge Pit Site information repositories at the following locations:

Pocatello Public Library, 113 S. Garfield, Pocatello, Idaho 83204.

United States Environmental Protection Agency, Region 10 Office of Environmental Cleanup—Records Center, Attn: Bob Phillips, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Deborah J. Yamamoto, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–113, Seattle, Washington 98101, (206) 553–7216.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region 10 announces its intent to delete a site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments to this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3)of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Union Pacific Railroad Sludge Pit Site (''Site'') at 300 South Harrison, Pocatello Idaho, 83201, from the NPL.

EPA will accept comments on the plan to delete this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the UPRR Sludge Pit Site and explains how the Site meets deletion criteria.

II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that ''releases'' (sites) may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years

after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of the UPRR Sludge Pit Site, no hazardous substances were left on-Site, making ''unlimited use and unrestricted exposure'' possible. Therefore, the five-year review requirement of Section 121 (c) of SARA is not applicable. If, however, new information becomes available that indicates a need for further action, EPA may require remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 10 issued a final close out report documenting the achievement of cleanup goals; (2) The Idaho Division of Environmental Quality (IDEQ) concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and, (4) All relevant documents have been made available for public review in the local Site information repository.

Deletion of the Site from the NPL does not itself, create, alter or revoke any individual rights or obligations. The NPL is designed primarily for information purposes to assist EPA management. As mentioned in Section II of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final action in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA's Regional Office in Seattle, Washington.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Background

The UPRR Sludge Pit Site is located at 300 South Harrison in Pocatello, Bannock County, Idaho. The Site is approximately one acre in size, and is located north of UPRR's West Pocatello Railroad Yard, a several hundred acre facility located northwest of the City of Pocatello. The McCarty's/Pacific Hide and Fur Superfund site is directly northeast of the sludge pit. The Site is located in an area of mixed commercial and light industrial property.

B. History

UPRR has operated a railroad yard on the property since the turn of the century. Operations have included maintenance and repair work, train assembly, and refueling. Railroad operations have involved the use of various fuels, cleaning agents, detergents and degreasers, including solvents.

UPRR operates a waste water treatment plant (oil/water separator and dissolved air flotation unit). The treatment plant receives water from all rail yard storm drains and from many building floor drains. Between 1961 and 1983, approximately 3,000 gallons per week of sludge generated by treatment of the waste water at the plant were collected and disposed in an unlined pit.

An EPA site investigation conducted in 1983 found that seepage from the sludge pit and a former railroad tie treating facility contributed to ground-water contamination beneath the pit. Ground-water samples from nearby private wells contained low levels of organic compounds consistent with the wastes discharged to the pit. As a result of this investigation, the Site was placed on the NPL in 1984 (49 FR 37083).

The sludge pit was investigated and sampled by UPRR as part of a remedial investigation (RI) that lasted from 1985 to 1988. A variety of contaminants, including heavy metals (cadmium, chromium, copper, lead and zinc), volatile and semi-volatile organic compounds (ethylbenzene, xylenes, trans-1,2-dichloroethene, tetrachloroethene, polycyclic aromatic hydrocarbons (PAHs), nitrosamines, dichlorobenzene and a phthalate) were found in the sludge (and to a lesser extent, the underlying soil and silt) at the Site during the RI. Contamination in ground water consisted primarily of PAHs, as nonaqueous phase liquids (NAPLs), floating on the surface of the water table in the upper aquifer below the sludge pit. Low levels of heavy metals, semi-volatile and volatile organic compounds (VOCs) found in the sludge were also found in the ground water.

The RI found that the sludge posed the greatest risk to human health through possible direct contact and as a continuing potential source to ground-water contamination. During 1990, UPRR finalized the RI, as well as the human health and ecological risk assessment. The feasibility study (FS) was completed in early 1991.

Based on the results of the RI/FS and risk assessment, EPA signed a Record of Decision (ROD) for the Site on September 10, 1991. The selected remedial action in the ROD included the following components:

- Excavation and off-site disposal of contaminated soil, silt, and sludge to the maximum extent practicable; treatment of excavated material that failed the toxicity characteristic leachate procedure test; excavated areas backfilled with clean fill and graded; construction and maintenance of a low permeability cap over the entire pit boundary, and construction of a permanent fence around the entire sludge pit.
- Treatment of remaining, unexcavated soil and NAPL-contaminated ground water via soil flushing, an on-Site oil/water separator and a dissolved air flotation unit (DAF); effluent discharge to the publicly owned treatment works (POTW) and residual sludge tested and appropriately disposed off-site.
- Provision for design and installation of an alternate water supply system in the event that the system is deemed necessary.
- Implementation of administrative and institutional controls in the property deed such as air monitoring, ground-water monitoring, and land and water use restrictions.
- Implementation of quarterly ground-water monitoring for all on-Site wells, at a minimum, for the first three years following completion of remedial activities.
- Implementation of comprehensive on- and off-Site soil and ground-water sampling, prior to initiation of the remedial action (RA), to determine background levels and the extent to which on-Site concentrations exceed background.

In 1992 and 1993, UPRR undertook several remedial design (RD) support activities, including sampling soil and ground water to determine background concentrations, and three rounds of

ground-water sampling of all on-Site monitoring wells to establish baseline VOC, PAH, and metals concentrations. In addition, UPRR conducted a soil treatability study to test tap water and commercially available surfactants as potential soil flushing solutions for use in the in situ soil flushing system.

Based on the results of the pre-RD activities, EPA determined that an amendment to the ROD was necessary. The Amended ROD, signed on September 29, 1994, set forth the final remedial performance standards and cleanup levels for contaminants at the Site. The Amended ROD also modified the original remedy by eliminating the requirements to install an in situ soil flushing system, the DAF treatment component of the ground-water pretreatment system, and the permanent Site fence.

Based on the treatability study test results and the tests performed on the contaminated soil beneath the sludge pit, EPA concluded that in situ soil flushing would not achieve the goal of improving or providing appreciable protection of the ground water. The tests also showed that the DAF unit was not needed since contaminant concentrations in leachate and the upper aquifer were significantly below the required discharge limits mandated by the POTW. The DAF unit was not suitable for removal of the free oil whereas the oil/water separator, which remained a part of the pretreatment system, was designed for that purpose. UPRR installed a temporary fence during remedial action for Site security and to protect the public from physical contact with contaminated material during construction. Since contaminated material in the sludge pit was excavated and filled with clean material, future exposure to contaminated soil was eliminated once construction activities were completed, thereby eliminating the need for a permanent fence.

C. Characterization of Risk

Prior to cleanup, the preliminary environmental pathways of concern were potential direct contact with sludge in the pit and potential ingestion of contaminated ground water. The estimated pre-remediation site-specific cancer risk for ground water was 1 x 10^{-3}.

Remedial action began in 1994 and included excavation of the sludge pit, filling the pit with clean material, installation of a geomembrane cover, no-dig barrier and final grading. All contract work was completed by the end of November 1994.

UPRR began ground-water monitoring in July 1994 and ground-water extraction/treatment in late November 1994. In July 1995, UPRR submitted documentation that performance monitoring results indicated achievement of the ground-water performance standards. UPRR conducted its first round of long-term ground-water compliance monitoring on July 21, 1995. On August 8, 1995, EPA approved shut down of the ground-water extraction/treatment system. UPRR has conducted four rounds of long-term compliance monitoring since July 1995.

Removal of contaminated sludge and installation of a cover over the former sludge pit has eliminated direct contact as a potential route of exposure and removed the source of ground-water contamination. Analytical data from four rounds of ground-water compliance monitoring indicate that concentrations of contaminants of concern are below ROD cleanup levels. Current Site risk from chemicals of concern is 7×10^{-5}, which is less than the ROD cleanup level of 1×10^{-4} cumulative cancer risk for combined residential/industrial land use.

With the implementation and completion of all remedial activities, the Site no longer poses any threat to human health or the environment, insuring that no further action is required. With the exception of decommissioning of the extraction/treatment system and abandoning of monitoring wells, there are no other operation and maintenance activities to be performed at the Site. No hazardous substances were left on-Site above levels that allow for unlimited use and unrestricted exposure; therefore, the five year review requirement of Section 121 (c) of SARA is not applicable.

D. Public Participation

Community input has been sought by EPA Region 10 throughout the cleanup process at the Site. Information repositories were established at the Southeastern Idaho Health District Office and at the Pocatello Public Library. Fact sheets were distributed in 1988, 1989, and 1990, and the proposed plan for cleanup was issued in 1991. Additional fact sheets were distributed in September 1992 and July 1994.

A copy of the Deletion Docket can be reviewed by the public at the Pocatello Public Library, or the EPA Region 10 Superfund Records Center. The Deletion Docket includes this document, the ROD, Amended ROD, Remedial Action Construction Report, and Final Site Close-Out Report. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other persons have implemented all appropriate response actions required.'' EPA, with the concurrence of IDEQ, believes that this criterion for deletion has been met. Ground-water and soil data from the Site confirm that the ROD cleanup goals have been achieved. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket at the information repositories.

Dated: July 10, 1997.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 97–19545 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 98, 125–136, 170, 174, and 175

[CGD 97–042]

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is considering developing additional regulations to address offshore supply vessels (OSV's). First, it needs to determine a tonnage breakpoint and appropriate standards for larger OSV's because of concerns on the adequacy of the existing regulations, especially for vessels competing in the international market. Second, because of industry commitments to a previous rulemaking, it needs to bring crew boats under regulations for OSV's.

DATES: Comments must reach the Coast Guard on or before September 23, 1997.

ADDRESSES: You may mail comments to Executive Secretary, Marine Safety Council (G–LRA), Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or deliver them to the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Office of Operating

and Environmental Standards (G–MSO–2), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Request for Information

The Coast Guard encourages interested persons to participate in this request by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that the opportunity for oral presentations is appropriate, it will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On December 18, 1996, the Coast Guard published in the **Federal Register** a final rule (61 FR 66613) interpreting the alternative tonnage for OSVs and establishing a limit of 6,000 gross tons, as measured under the International Convention on Tonnage Measurement of Ships (ITC), for OSVs regulated under 46 CFR subchapter L. This tonnage corresponds to the maximum length of 100 meters for OSVs constructed to the latest international standards, and enables the domestic OSV industry to be more competitive in the international market. That final rule resulted from amended section 709(3) of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324; 110 Stat. 3901) and resides in 46 CFR 125.160.

With the promulgation of the new definition of OSVs and the need for the fleet of OSVs to serve drilling and production units in deeper waters, the Coast Guard is closely monitoring all aspects of the design, construction, and operation of OSVs built since the effective date of that final rule. With the increase in gross tonnage and length of OSVs, it is obvious that larger OSVs need standards beyond those of 46 CFR subchapter L to address the safety concerns inherent within large size and deepwater operations. The National Offshore Safety Advisory Committee (NOSAC) recommended that the Coast Guard promulgate supplementary regulations to deal with the new issues peculiar to larger OSVs.

Comments received after the publishing of the interim rule on 46 CFR subchapter L in November 1995 also indicated a desire that the Coast Guard regulate crew boats under subchapter L. NOSAC recommended the same.

The final rule for 46 CFR subchapter L is currently in final clearance and should be published during July 1997. Although the Coast Guard cannot promulgate new rules until that rule is published, it can begin to develop them; hence this notice.

Discussion of Prospective Rules

The Coast Guard is publishing this notice to indicate its consideration of additional issues relating to OSVs. There are two main ones.

First, the Coast Guard is considering establishing a breakpoint in convention gross tonnage (between 2,000 ITC gross tons and 6,000 ITC gross tons) so as to develop two categories of OSVs, large and small. It also is considering developing appropriate standards for the larger OSVs beyond those now in subchapter L to enable the vessels to engage in fair competition in international markets while ensuring their safety.

Second, the Coast Guard is considering regulating crew boats under 46 CFR subchapter L. These boats would have been proper subjects of the rule about to become final, but the issue of how to treat them arose too late.

Questions

To adequately address the issues raised by this notice, the Coast Guard needs more information. Public response to the questions contained in this notice will help the Coast Guard to more completely and carefully consider these issues. The questions are not all-inclusive, and any supplemental, germane information is welcome. Responses to the following questions would be particularly useful:

1. Where (between 2,000 ITC gross tons and 6,000 ITC gross tons) should the breakpoint between large and small OSVs fall, and for what reasons? For example, given the provisions of the 1978 International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), does a breakpoint of 3,000 gross tons make sense?

2. What standards (whether domestic, international, or both) beyond those already in subchapter L should the larger OSVs meet?

3. Should crew boats be regulated under 46 CFR subchapter L? Why or why not?

4. What should be the appropriate manning levels of larger OSVs? Of crew boats? Of both?

5. What should be the appropriate license requirements of larger OSVs (as provided for by STCW)? Of crew boats? Of both?

Dated: July 15, 1997.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–19449 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186; FCC 97–254]

Assessment and Collection of Regulatory Fees for Fiscal Year 1997

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: On June 26, 1997, the Commission released a Report and Order that revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. See 47 U.S.C. 159 (a). The intended effect of this action is to seek further comments concerning our proposals to require Commercial Mobile Radio Service (CMRS) licensees to maintain and make available to the Commission within 30 days, upon request by the Managing Director, pursuant to delegated authority, documentation concerning the basis for their fee payment; require that non-profit entities exempt from the regulatory fee requirement because of possessing either non-profit status under § 501 of the Internal Revenue Code, 26 U.S.C. 501, or certification as a non-profit corporation or other non-profit entity by state or other governmental authority submit documentation of their non-profit status; and publish annually in the **Federal Register** lists of those commercial communications firms and

businesses who have paid a regulatory fee for the preceding fiscal year (except licensees for vanity call signs in the amateur service or any other licensees that pay their regulatory fee at the same time the application is paid).

DATES: Written comments are due: August 14, 1997. Comments regarding Paperwork Burden Impact: September 23, 1997.

ADDRESSES: Federal Communications Commission, Secretary's Office, Room 222, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey, Office of the Managing Director at (202) 418–1995.

SUPPLEMENTARY INFORMATION: Adopted: July 17, 1997. Released: July 18, 1997.

1. The Commission recently completed a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees, $152,523,000, that Congress has required it to recover for Fiscal Year (FY) 1997. See Report and Order in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96–186, FCC 97–215, released June 26, 1997, 62 FR 37408 (July 11, 1997). Since the commencement of our regulatory fee program, Congress has consistently increased the amount that we are to recover. For FY 1997, Congress has required that we collect $152,523,000 compared with $60,000,000 that Congress required us to collect for FY 1994, the initial year of the fee program. In order to fairly and efficiently collect the annual fees necessary to recover these increasingly large amounts, we believe that certain changes to our collection processes are warranted. Therefore, by this Further Notice of Proposed Rulemaking (FNPRM), we are proposing to modify our collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments.

2. We propose to require Commercial Mobile Radio Service (CMRS) licensees to maintain and make available to the Commission within 30 days, upon request by the Managing Director, pursuant to delegated authority, documentation concerning the basis for their fee payments. Such documentation on the number of pagers, cellular telephones or PCS units is not available in the Commission's files and is necessary in order to assure that fee payments are accurately prepared and reliable.

3. Acceptable documentation, which we propose to require that the filing entity retain for a period of three years, might include records such as reports to other government agencies, billing records, certified financial statements, or other records that demonstrate the accuracy of the fee payment. CMRS licensees probably already prepare such documentation for use in calculating their fee payments. Thus, maintaining this information should constitute little, if any, burden. Our intention is to minimize, to the fullest extent possible, any burden on fee payers related to our proposed requirement for documentation of the basis for fee payments. Therefore, interested parties are specifically requested to comment upon both the nature and extent of documentation of unit counts that would be most appropriate for our needs.

4. In addition, we are proposing to require that non-profit entities exempt from the regulatory fee requirement submit documentation of their non-profit status. Section 1.1161(c) of the Commission's rules exempts from annual regulatory fees entities possessing either non-profit status under § 501 of the Internal Revenue Code, 26 U.S.C. 501, or certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority. For fiscal years 1994 through 1996, we required as part of our fee payment verification process that non-profit entities provide, upon request, copies of their IRS determination letters or other documentation of nonprofit status. This procedure has become unduly burdensome as we seek to implement more efficient methods to improve our collections systems.

5. Therefore, we are proposing to revise our procedures to require that all exempt non-profit entities submit to us their current IRS determination letters or other current documentation of non-profit status. Non-profit entities need file this supporting documentation only once. Of course, exempt entities would also be obligated to inform us of any change in their exempt status. The time for filing documentation of exempt status would be announced, pursuant to authority delegated to the Managing Director, by a public notice published in the **Federal Register** following completion of this proceeding.

6. We are also requesting comment on a proposal to publish annually in the **Federal Register** lists of those commercial communication firms and businesses that have paid a regulatory fee for the preceding fiscal year. (We would not, however, publish information concerning regulatory fee payments by licensees for vanity call signs in the amateur radio service or by any other licensee that pays its regulatory fee at the same time the application fee is paid.) The information published would include the amount of the fee paid and the volume or units upon which the fee payments were based. This will enable fee payers to verify that their payments have been properly recorded and to bring errors to our attention, thereby reducing the burden on our fee payment verification process. We intend to publish the first such list once fee payments for FY 1997 are made and prior to our establishment of fees for FY 1998. In connection with publication of the lists, interested parties should be aware that, consistent with our existing rules, certain types of proprietary information may be entitled to confidential treatment. Fee payers who believe that they qualify should request confidentiality when filing the relevant information. See 47 CFR 0.459; see also Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Memorandum Opinion and Order on Reconsideration, MD Docket No. 94–19, FCC 95–257, released June 22, 1995, 60 FR 34902 (July 5, 1995). All such confidentiality requests must, of course, be fully supported and meet all applicable legal standards. See 47 CFR 0.459(b),(c), and 0.457(2)(i).

7. Finally, we note that we could have adopted some of the above proposals without notice and comment because they constitute procedural changes to our regulatory fee payment collection and verification processes and procedures. See 5 U.S.C. 553(b)(3)(a). Nevertheless, we are requesting public comment, including comment on alternative processes and procedures, to help assure that our actions are the most effective available without imposing any undue burden on those subject to the payment of a regulatory fee. [1]

Procedural Matters

A. Ex Parte Rules

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. See 47 CFR 1.1203 and 1.1206.

B. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* (1981) (RFA),

[1] As a separate matter, we are revising FCC Forms 159 and 159-C to provide a certification statement to be signed by an individual owner or officer of the firm subject to the fee payment stating that the fee payment filed is accurate and complete and supported by the firm's internal accounting records.

the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in the Attachment. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the FNPRM, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Commission shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. § 603(a).

C. Paperwork Reduction Act Compliance

Initial Paperwork Reduction Act of 1995 Analysis

10. This FNPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this FNPRM. Comments should address: (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 Commission's 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.

11. Written comments by the public on the proposed and/or modified information collections are due September 23, 1997. Written comments must be submitted to the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain____t@al.eop.gov.

12. For additional information concerning the information collections contained in this FNPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: None.
Title: Assessment and Collection of Regulatory Fees for Fiscal Year 1997.
Form No.: None.
Type of Review: New Collection.
Respondents: Business or other for profit; individuals or households; not for profit institutions.
Number of Respondents: To be determined.
Estimated Time Per Response: To be determined.
Total Annual Burden: To be determined.
Needs and Uses: The Commission will require CMRS licensees to maintain, and make available upon request, documentation concerning the basis for their fee payments. Non-profit entities, exempt from regulatory fee requirements, will be required to submit, on a one-time basis, copies of their IRS determination letters or other documentation of non-profit status. This information is needed to ensure that the Commission is collecting the appropriate regulatory fees, as directed by Congress.

D. Authority and Further Information

13. Accordingly, *it is ordered* that, pursuant to authority in §§ 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and (j), 159, and 303(r) and procedures set forth in §§ 1.415(b) and 1.419 of the Commission's Rules, 47 CFR 1.415(6), 1.419, interested parties may file comments on or before August 14, 1997. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments should be sent to the Office of Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties who do not wish to formally participate in this proceeding, may file informal comments at the same address. Comments will be available for public inspection during regular business hours, in the FCC Reference Room, Room 239, 1919 M St., N.W. 20554.

14. *It is further Ordered* that a copy of this further notice of proposed rulemaking, including the IRFA herein, will be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603(a).

15. Further information about this proceeding may be obtained by contacting Martha Contee at (202) 418–0260.

Initial Regulatory Flexibility Analysis

16. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities of the policies and rules in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the FNPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, 5 U.S.C. 603(a).

17. Need for and Objectives of the Proposed Rules. We are proposing to modify our collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. We seek comment on these proposals.

18. Legal Basis. The proposed action is authorized under § 4(i) and(j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 159, and 303(r).

19. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

20. The proposals in this FNPRM would potentially affect a very broad array of small entities, including small entities described as cable services or

systems, common carrier services and related entities, international services, mass media services, and wireless and commercial mobile services. In the companion rulemaking document to this FNPRM—the Report and Order in this present docket, very recently released—we have extensively described the small entities that might be affected by this action, and have also described the numbers of such entities. (See ''Final Regulatory Flexibility Analysis,'' Attachment A of Report and Order, MD Docket No. 96–186, FCC 97–215, released June 26, 1997, 62 FR 37408 (July 11, 1997).) We hereby incorporate into this IRFA, by reference, those descriptive sections from the Report and Order.

21. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. In the companion Report and Order to this FNPRM and in the Commission's Rules, we have described the methodology used by affected entities to determine required fee amounts, the procedures for calculating and filing fee payments, the skills necessary to file, and the results of not filing in accordance with the rules. (See Report and Order, Attachment H and §§ 1.1157 through 1.1167 of the Commission's Rules, 47 CFR 1.1157 through 1.1167.) We hereby incorporate into this IRFA, by reference, those descriptions. In addition, we note that the present proposals, if adopted, would require Commercial Mobile Radio Service (CMRS) licensees to maintain and make available to the FCC within 30 days of request, documentation concerning the basis for their fee payments and that these documents be retained by the payer for three years; would require that non-profit entities exempt from the regulatory fee requirement submit documentation of their non-profit status; and would direct the Commission to publish annually, in the **Federal Register**, a list of those firms and individuals who paid a fee for the preceding fiscal year and who engaged in the provision of communications for commercial purposes, along with the amount of the fee paid, and the volume or units upon which the fee payments were based. We seek comment on these proposals.

22. Steps taken to minimize any significant economic impact on small entities, and significant alternatives considered and rejected. As described in the paragraph immediately above, the Commission is proposing certain modifications to the collection procedures for regulatory fees in order to help assure increased accuracy and timeliness of regulatory fee payments. Each of the above-described proposals that require compliance would entail some level of economic impact, and this impact would fall on some small entities. We believe, however, that these proposals, if adopted, would help ensure the integrity of the regulatory fees program. We seek comment on any possible alternatives that might lessen the economic impact on small entities while still furthering the goals of this proceeding.

23. Federal rules that may duplicate, overlap, or conflict with the proposed rules. We are aware of no rules that may duplicate, overlap, or conflict with the proposed rules. We seek comment on this conclusion.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–19657 Filed 7–24–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970110171–7171–01; I.D. 041097A]

RIN 0648–AJ63

North and South Atlantic Swordfish Fishery; Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic swordfish fishery to: Reduce the quota in the North Atlantic Ocean to 2,458 metric tons (mt) dressed weight (dw) for 1997, 2,393 mt dw for 1998, and 2,327 mt dw for 1999, with one half of each year's quota allocated equally to each of two semi-annual fishing seasons (June 1 through November 30 and December 1 through May 31); define the South Atlantic swordfish stock, set a 187.5 mt dw quota for that stock for 1997, and implement the same management measures for the South Atlantic swordfish stock as are currently in place for the North Atlantic stock, such as minimum size limit, vessel permitting, logbook reporting, and observer requirements. The intent of this action is to improve conservation and management of the Atlantic swordfish resource, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is also seeking comments on amending Atlantic swordfish regulations as they apply to vessel operations at the time of a closure. NMFS will convene public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule.

DATES: Comments must be submitted on or before August 21, 1997. See **SUPPLEMENTARY INFORMATION** for hearing dates and times.

ADDRESSES: Comments on the proposed rule and copies of the Draft Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for hearing locations. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Rebecca Lent or to the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, fax: 301–713–1917; or Buck Sutter, 813–570–5447, fax: 813–570–5364.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background

According to the 1996 ICCAT stock assessment, the fishable biomass (total weight) of North Atlantic swordfish at the beginning of 1996 was estimated to be at 58 percent of that needed to produce maximum sustainable yield (MSY). The 1995 fishing mortality rate (F) was estimated to be 2.05 times the fishing mortality rate necessary to produce MSY. The average size of North Atlantic swordfish has declined from over 91 kg dw (200 lbs) in 1963 to 30.5 kg dw (67 lbs) in 1995. Because the

stock is continuing to decline, reductions in quotas are required in the immediate future to rebuild the stock to levels that would support MSY.

At the November 1996 ICCAT meeting, a recommendation was adopted to reduce the total quota for all countries fishing on swordfish in the North Atlantic to 8,475 mt dw for 1997, 8,250 mt dw for 1998, and 8,025 mt dw for 1999. North Atlantic landings reported to ICCAT for 1995 and 1996 were estimated to be 12,750 mt dw. The United States is allocated 29 percent of the total North Atlantic quota, which is 2,458 mt dw for 1997, 2,393 mt dw for 1998, and 2,327 mt dw for 1999 (see Table 1).

Consistent with the ICCAT recommendations for 1995 and 1996, the United States was obligated to reduce its total quota by the number of estimated dead discards. However, for 1997, the United States is not obligated to reduce the ICCAT quota to account for discards; therefore, the 1997 U.S. quota recommended by ICCAT (2,458 mt dw) represents an actual increase of 7.7 percent in the total weight of swordfish available for landing as compared to the adjusted 1996 quota. In 1998, the U.S. quota is reduced by 2.64 percent from the 1997 allowable catch, and in 1999, the U.S. quota is reduced by 2.76 percent from 1998 level. However, because dead discards are no longer required to be subtracted, the cumulative impact over 1997 through 1999 is a net gain of 1.93 percent over the 1996 adjusted quota. In 1996, ICCAT also recommended that overharvest or underharvest of a contracting party's quota must be applied to the following year's quota for that country.

The 1996 report of the Standing Committee on Research and Statistics (SCRS) of ICCAT noted that the South Atlantic swordfish stock at the beginning of 1996 was near the biomass associated with MSY; however, the 1995 fishing mortality rate was estimated to be 1.24 times F_{MSY}. The SCRS cautioned that these estimates should be considered preliminary. For participating countries with harvest levels below the 187.5 mt dw threshold in 1993 or 1994, ICCAT adopted a recommendation equivalent to a 187.5 mt dw cap for 1995, 1996, and 1997. NMFS has determined that the 1993 and 1994 U.S. South Atlantic swordfish harvest levels were below this threshold. Allowable catches for those countries whose landings already exceed the threshold were capped at 1993 or 1994 harvest levels, whichever was higher.

NMFS has evaluated the annual quota and the need for a South Atlantic management unit area, and quota levels and gear type restrictions in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. NMFS has concluded that it is necessary to implement permitting, reporting, and an observer program to provide for swordfish catch monitoring in the South Atlantic.

Management Measures

This proposed rule, if adopted, would further ICCAT's international management objectives for the Atlantic swordfish fishery. The proposed regulations are summarized as follows:

North Atlantic Quota

NMFS proposes to implement ICCAT's 1996 recommendation of a North Atlantic U.S. quota of 2,458 mt dw for 1997, 2,393 mt dw for 1998 and 2,327 mt dw for 1999 (Table 1). Each year, the quota would be divided between a directed fishery quota and an incidental quota. The incidental quota is needed to allow for incidental landings, at levels stated in 50 CFR 630.25, during anticipated directed fishery closures and for swordfish taken incidental to other fisheries. During a 2-month closure of the directed fishery in 1995, a reduction in allowable incidental harvest was implemented on November 27, 1995 (60 FR 58245), but did not prevent the overall established quota from being exceeded. Therefore, NMFS proposes to increase the incidental quota to 300 mt dw each year for 1997, 1998, and 1999 to meet expected incidental harvest levels during anticipated directed fishery closures. The proposed incidental quota is based on the November 1995 harvest levels and assumes a directed fishery closure of approximately 2 months per semi-annual season. During November 1995, a bycatch limit of 15 swordfish per longline trip was in effect. The increased incidental catch reserve should ensure that the total ICCAT quota is not exceeded.

The directed fishery quota would be further divided into two semi-annual quotas: June 1 through November 30 and December 1 through May 31 (Table 1). Each of the directed semi-annual quotas would be further subdivided into a drift gillnet quota and a longline and harpoon quota (Table 1). Allocations by gear types are in the same proportions as those established for 1994 through 1996.

TABLE 1.—SWORDFISH NORTH ATLANTIC PROPOSED ALLOCATIONS

[in mt dw]

	1996	1997	1998	1999
ICCAT Recommended Quota	2,625	2,458	2,393	2,327
Incidental Catch Quota	254	300	300	300
Directed Fishery Quota (Total—Incidental)	2,371	2,158	2,093	2,027
Semi-Annual Directed Quota	1,185.5	1,079	1,046.5	1,013.5
Semi-Annual Drift Gillnet Quota	23.5	21	20.5	20.5
Semi-Annual Longline and Harpoon Quota	1,162	1,058	1,026	993
Discards Adjustment	342			
Landing Quota (Total—Discards)	2,283	2,458	2,393	2,327

Following a closure of the directed longline fishery, any overharvest or underharvest would be added to, or subtracted from, the incidental catch reserve of 300 mt dw for that year. Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, per the ICCAT recommendations.

Definition of South Atlantic Swordfish Stock

NMFS proposes to define the South Atlantic swordfish stock to include all swordfish in the Atlantic Ocean south of 5° N. lat., which would be consistent

with ICCAT's delineation of the northern and southern swordfish stocks.

Permits, Reporting and Observers

The proposed action would institute a uniform system of swordfish management measures for all U.S.-flagged vessels operating throughout the Atlantic Ocean. The same general swordfish management measures currently in place for the North Atlantic would be extended to the South Atlantic: Vessel permits, logbook reporting, observer coverage, limited access permitting, and other, related management measures (50 CFR part 630). Such measures are necessary to monitor the catch of U.S.-flagged vessels operating in the South Atlantic.

NMFS proposes to require that the owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic or South Atlantic ocean, or that takes swordfish in these areas as incidental catch, possess a valid swordfish vessel permit. Current holders of valid swordfish vessel permits would not be required to obtain a new permit to fish for and possess swordfish in the South Atlantic.

Under the High Seas Fishing Compliance Act (HSFCA) of 1995 and its implementing regulations (50 CFR part 300), U.S. vessels fishing outside the exclusive economic zone (EEZ) of any nation are required to obtain a HSFCA permit and comply with applicable requirements, including reporting. Some U.S.-flagged vessels currently fishing in the South Atlantic Ocean are not required to possess a HSFCA permit because their fishing activities occur exclusively within the EEZ of another nation. Accordingly, the proposed swordfish reporting system for vessels fishing in the South Atlantic Ocean is needed to monitor all catches and landings of U.S.-flagged vessels that would not otherwise be reporting under a North Atlantic swordfish or HSFCA permit.

NMFS proposes to require that the owner and operator of a vessel for which a permit has been issued, and that is operating in South Atlantic waters, ensure that a daily logbook is maintained of the vessel's swordfish fishing effort, catch, and disposition on logbook forms available from NMFS. These forms would be required to be submitted to NMFS and along with tally sheets for all swordfish off-loaded and for other species off-loaded with swordfish. These proposed requirements are the same as those currently required for the North Atlantic swordfish fishery.

NMFS proposes to require at-sea observer coverage for up to 5 percent of the vessels participating in the South Atlantic swordfish fishery, and would require any vessel that is selected by NMFS to carry an observer.

South Atlantic Quota

United States landings of swordfish from the South Atlantic stock during 1993 and 1994 were estimated to be less than or equal to 187.5 mt dw. Therefore, consistent with the ICCAT recommendation, NMFS proposes to implement a quota of 187.5 mt dw annual landings maximum for 1997. Following a closure of the directed longline fishery in the South Atlantic Ocean, no incidental harvest would be allowed.

United States landings of swordfish from the South Atlantic were estimated to be less than 187.5 mt dw in 1996. Because there were no regulatory requirements on U.S.-flagged vessels to report landings from the South Atlantic Ocean during 1993 or 1994, vessel operators may have catch records that indicate, when combined with other similar records, landings higher than 187.5 mt dw. NMFS estimates, based on the best information available, that there are eight U.S.-flagged vessels operating (i.e., harvesting and landing swordfish) in the South Atlantic Ocean. NMFS requests submission of any such catch and landing records from the South Atlantic by U.S.-flagged vessels to rectify, if necessary, historical data on harvest levels during 1993 and 1994. If verifiable documentation can be produced, it is possible that the U.S. quota allocation could be revised to be consistent with the ICCAT recommendations.

NMFS is currently considering Amendment 1 to the Fishery Management Plan for Atlantic Swordfish, which would establish a limited access system for vessels fishing in the North Atlantic. If Amendment 1 is adopted, NMFS will issue regulations to implement it. Proposed regulations to do so were published on February 26, 1997 (62 FR 8672). NMFS proposes that, after implementation of Amendment 1, swordfish permits for the South Atlantic be limited to those who qualify for a directed permit under Amendment 1. After considering comments on this issue, it could be implemented in the final rule to implement Amendment 1, and that final rule would respond to any comments received.

Gear and Incidental Catch Restrictions

NMFS proposes to prohibit the use of drift gillnet gear to fish for swordfish in the proposed South Atlantic management area due to the absence of a historical drift gillnet fishery in this region. Similarly, NMFS proposes no incidental catch allowance for the South Atlantic Ocean as there is no known significant U.S. directed fishery for sharks or tunas in the South Atlantic in which swordfish would occur as an incidental catch.

North and South Atlantic Management Summary

Under this proposed rule, swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, could be sold only to a dealer (as defined at 50 CFR 630.2) holding a valid annual dealer permit (50 CFR 630.4). Permitted swordfish fishers in the North Atlantic must adhere to all recordkeeping and reporting requirements as outlined in 50 CFR 630.5 (daily logbooks and tally sheets), and participate in the observer program as described in 50 CFR 603.10. When the swordfish fishery is closed in the North Atlantic, swordfish could only be landed or possessed incidentally to other fisheries, subject to incidental catch limits, and sold only to dealers holding a valid dealer permit. Swordfish directly or incidentally harvested or possessed from the North Atlantic could not be sold, traded or bartered in the South Atlantic at any time.

Vessel permits would be required for all swordfish fishing vessels operating in the North or South Atlantic Ocean. Below 5° N. lat., it would not be required that swordfish harvested from or possessed in the South Atlantic Ocean be sold to permitted dealers. However, all permitted vessels harvesting or possessing swordfish from the South Atlantic still would have to comply with applicable recordkeeping and reporting requirements, including ensuring that copies of offloading tally sheets are submitted. During a closure of the South Atlantic swordfish fishery, swordfish could not be possessed on board a vessel subject to the jurisdiction of the United States operating in the South Atlantic Ocean.

All remaining regulations that apply to the North Atlantic swordfish fishery would apply to the South Atlantic fishery. These include the prohibition on at-sea transfer and harvest limitations such as minimum size limit, vessel trip limits, and carcass condition requirements.

Request for Comments on Offloading

In November of 1995, in December of 1995, and in April of 1997, NMFS closed the directed swordfish fishery. These closures raised a number of issues that NMFS may address through future rulemaking. Specifically, NMFS is

seeking comment on the possibility of providing ''offloading windows,'' or a time period between a fishery closure date and the time a vessel is required to offload the trip harvest. The regulations would need to be amended before offloading windows could be provided. In addition, it may be necessary to establish standard procedures for vessels that are in distress and are unable to return to port prior to the designated deadline.

Public Hearings

The public hearings are scheduled as follows:

1. Friday, August 1, 1997, 12 p.m.–2 p.m.—McAuliffe Seafoods, Gallows Bay Dock, Christiansted, St. Croix, USVI 00821; (809) 773–2661. This hearing will be a conference call with the hearing officer in a remote location.

2. Monday, August 4, 1997, 4 p.m.–6 p.m.—Gosman's Dock, West Lake Drive, Montauk, NY 11954; (516) 668–2447. This hearing will be a conference call with the hearing officer in a remote location.

3. Friday, August 8, 1997, 2 p.m.–5 p.m.—NMFS Northeast Regional Office (Conference Room), 1 Blackburn Drive, Gloucester, MA 01930; (508) 281–9260.

4. Friday, August 8, 1997, 2 p.m.–4 p.m.—NMFS Southeast Regional Office (Conference Room, 2nd floor), 9721 Executive Center Drive, North, St. Petersburg, FL 33702; (813) 570–5447.

Additional public hearings by means of conference calls may be convened if so requested. See **ADDRESSES** to make such a request.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rebecca Lent at (301) 713–2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of ATCA. The Assistant Administrator for Fisheries (NOAA) has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and for the domestic management of the Atlantic swordfish fishery.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities as follows:

At the November 1996 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), a recommendation, which the United States is bound to implement under the ATCA, was adopted reducing the total quota for all countries fishing on swordfish in the North Atlantic to 8,475 metric tons (mt) dressed weight (dw) for 1997, 8,250 mt dw for 1998, and 8,025 mt dw for 1999. North Atlantic landings for 1995 and 1996 were estimated to be 12,750 mt dw. The United States is allocated 29 percent of the total North Atlantic quota, or 2,458 mt dw for 1997, 2,393 mt dw for 1998, and 2,327 mt dw for 1999—the quotas proposed to be established by this proposed rule. For 1995 and 1996, the United States was obligated to reduce (i.e., adjust) its quota by the number of estimated dead discards. However, beginning in 1997, the United States is not obligated to reduce the ICCAT quota to account for discards; therefore the proposed 1997 U.S. quota of 2,458 mt dw represents an actual increase of 7.7 percent in the total weight of swordfish available for landing as compared to the adjusted 1996 quota of 2,283 mt dw. In 1998, the U.S. quota is reduced by 2.64 percent from the 1997 allowable catch, and in 1999, the U.S. quota is reduced by 2.76 percent from 1998 level. The cumulative impact for the approximately 300 participants in the North Atlantic swordfish fishery, from 1997 through 1999 is a net gain of 1.93 percent over the 1996 adjusted quota.

The drift gillnet fishery would experience a 12.8 percent decrease in allowable harvest from 1997–1999, due to the proposed increase in incidental catch quota and annual reductions in the total quota that, for driftnets, are not mitigated by not having to account for discards. However, because there are approximately only 13 drift gillnet vessels targeting swordfish, which represents only 4.3 percent of the approximately 300 vessels active in the swordfish fishery, a substantial number of small entities would not be significantly affected.

For the first time, ICCAT recommended that swordfish quotas be established for the South Atlantic. Landings by U.S. vessels in South Atlantic waters have historically been less than or equal to 187.5 mt dw, based on the best current scientific information. Because there were no regulatory requirements on U.S.-flagged vessels to report landings from the South Atlantic Ocean during 1993 or 1994, vessel operators may have catch records that indicate, when combined with other similar records, landings higher than 187.5 mt dw. NMFS estimates, based on the best information available, that there are eight U.S.-flagged vessels operating exclusively (i.e., harvesting and landing swordfish) in the South Atlantic Ocean. The proposed rule requests submission of any such catch and landing records from the South Atlantic by U.S.-flagged vessels to more accurately ascertain historical harvest levels during 1993 and 1994. For participating countries with harvest levels below the 187.5 mt dw threshold in 1993 or 1994, the ICCAT recommended a quota equivalent to a 187.5 mt dw cap for 1997. Assuming 187.5 mt dw to be the upper bound of past U.S. harvest levels for the South Atlantic, a 1997 cap of 187.5 mt dw should not have a significant impact. If verifiable documentation can be produced of higher historical levels, it is possible that the U.S. quota allocation could be revised.

Because a significant economic impact on a substantial number of small entities is not anticipated by the implementation of the proposed North and South Atlantic quotas, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number. There are new collection-of-information requirements in this proposed rule beyond those already approved by OMB under Control Number 0648–0016 (Federal Fisheries Logbooks) and 0648–0205 (permitting requirements and observer notifications). NMFS is proposing to extend these programs to cover fishing activities in the South Atlantic, by requiring vessel permits, vessel reporting, observer programs, and other related management measures to monitor the catch of all U.S. flagged-vessels operating in the South Atlantic. This would require revised reporting and participation in observer programs by all those who are already permitted and new reporting by those not currently permitted. The public reporting burden for this collection of information is estimated to average 30 minutes per response for logbooks (10 each for set form, trip summary and cost questions), 20 minutes for an initial vessel permit application and 2 minutes per vessel for observer notification and No-fishing Reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. In addition, this proposed rule restates a previously approved information collection to require dealer permits (0648–0205) at 5 minutes per response.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity

of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

NMFS reinitiated formal consultation for all highly migratory species commercial fisheries on September 25, 1996, under section 7 of the Endangered Species Act. The Biological Opinion (BO) resulting from this consultation was issued on May 29, 1997. It concludes that continued operation of the longline component of the swordfish fishery may adversely affect but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. The BO also concludes that the swordfish drift gillnet fishery segment of the Atlantic pelagic fishery is likely to jeopardize the continued existence of the right whale. Two alternatives that would avoid the likelihood of jeopardy were set forth in the BO, although NMFS has not identified a preferred alternative at this time. Therefore, NMFS extended the emergency closure of the drift gillnet segment of the swordfish fishery until a preferred option is identified and implemented (62 FR 30775, June 5, 1997).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and record keeping requirements, Management Unit Areas, Treaties.

Dated: July 18, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.1, paragraph (b) is revised to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(b) This part governs the conservation and management of the North Atlantic and South Atlantic swordfish stocks.

* * * * *

3. In § 630.2, the definitions of ''Dealer'' and ''North Atlantic swordfish stock'' are revised, and a definition for the ''South Atlantic swordfish stock'' is added, in alphabetical order, to read as follows:

§ 630.2 Definitions.

* * * * *

Dealer means the person who first receives, by way of purchase, barter, or trade, swordfish harvested from the Atlantic Ocean.

* * * * *

North Atlantic swordfish stock means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.

* * * * *

South Atlantic swordfish stock means those swordfish in the Atlantic Ocean, south of 5° N. lat.

* * * * *

4. In § 630.4, paragraphs (a)(1)(i) and (a)(1)(ii) introductory text, and (a)(2) are revised to read as follows:

§ 630.4 Permits and fees.

(a) *Applicability*—(1) *Annual vessel permits.* (i) Except as provided by paragraph (a)(1)(ii) of this section, the owner of a vessel of the United States must have an annual permit when—

(A) Fishing for or possessing swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea;

(B) Fishing for or possessing swordfish in or from the South Atlantic Ocean; or

(C) Taking such swordfish as incidental catch, regardless of whether retained.

(ii) The owner of a vessel that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, or the South Atlantic Ocean—

* * * * *

(2) *Annual dealer permits.* A dealer in the United States who receives swordfish harvested or possessed by a vessel of the United States must have an annual dealer permit.

* * * * *

5. In § 630.7, paragraphs (bb) and (cc) are added and paragraph (c) is revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(c) Sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to a dealer without a valid dealer permit required under § 630.4(a)(2).

* * * * *

(bb) Fish for or possess Atlantic swordfish south of 5° N. lat. using a drift gillnet or while carrying drift gillnet gear on board south of 5° N. lat.

(cc) Sell, barter or trade or attempt to sell, barter, or trade a swordfish harvested from or possessed in the South Atlantic Ocean during a closure of the South Atlantic swordfish fishery under § 630.25(a)(1).

6. Section 630.21 is revised to read as follows:

§ 630.21 Restrictions on transfer, offloading, and sale.

(a) A swordfish harvested from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, or the South Atlantic Ocean may not be transferred at sea, regardless of where the transfer takes place; and in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, or the South Atlantic Ocean, a swordfish may not be transferred at sea regardless of where the swordfish was harvested.

(b) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, or the South Atlantic Ocean, may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel that has been issued a vessel permit under § 630.4, except that a swordfish that is off-loaded in Puerto Rico or the U.S. Virgin Islands from a non-permitted vessel that fished exclusively shoreward of the outer boundary of the EEZ around Puerto Rico and the U.S. Virgin Islands with only handline gear aboard may be sold, traded, or bartered.

(c) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, may be initially purchased, traded, or bartered or attempted to be purchased, traded, or bartered only by a dealer with a valid dealer permit issued under § 630.4.

(d) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, or the South Atlantic Ocean in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

7. In § 630.23, paragraphs (a) and (b) are revised to read as follows:

§ 630.23 Harvest limitations.

(a) *Minimum size.* The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, or the South Atlantic

Ocean is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight. The cleithrum is the semicircular bony structure that forms the posterior edge of the gill opening. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement (Figure 1 to part 630).

(b) *Carcass condition.* A swordfish possessed in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, or the South Atlantic Ocean must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean, or South Atlantic coastal state must be maintained in whole or dressed form through off-loading, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section may not be landed.

* * * * *

8. In § 630.24, in paragraph (a) the designation (1) is added after the heading, paragraphs (a)(2) and (b)(5) through (b)(7) are added, and paragraphs (b)(1) through (b)(4), (c), (d)(4), and (e) are revised to read as follows:

§ 630.24 Quotas.

(a) *Applicability* (1) * * *

(2) A swordfish harvested from the South Atlantic swordfish stock by a vessel subject to the jurisdiction of the United States is counted against the directed-fishery quota.

(b) *Directed-fishery quota.* (1) The directed fishery quota for the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea for the period June 1, 1997, through May 31, 1998, is 2,116 mt dw for the longline/harpoon fishery and 42 mt dw for the drift gillnet fishery.

(2) The annual directed fishery quota for the period June 1, 1997, through May 31, 1998 for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea is 2,158 mt dw, divided into two semi-annual quotas as follows:

(i) For the semi-annual period June 1 through November 30:

(A) 21 mt dw that may be harvested by drift gillnet; and

(B) 1,058 mt dw that may be harvested by longline and harpoon.

(ii) For the semi-annual period December 1 through May 31:

(A) 21 mt dw that may be harvested by drift gillnet; and

(B) 1,058 mt dw that may be harvested by longline and harpoon.

(3) The annual directed fishery quota in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea for the period June 1, 1998, through May 31, 1999, is 2,093 mt dw for the longline/harpoon fishery and 41 mt dw for the drift gillnet fishery.

(4) The annual directed fishery quota for the period June 1, 1998, through May 31, 1999 for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea is 2,093 mt dw, divided into two semi-annual quotas as follows:

(i) For the semi-annual period June 1 through November 30:

(A) 20.5 mt dw that may be harvested by drift gillnet; and

(B) 1,026 mt dw that may be harvested by longline and harpoon.

(ii) For the semi-annual period December 1 through May 31:

(A) 20.5 mt dw that may be harvested by drift gillnet; and

(B) 1,026 mt dw that may be harvested by longline and harpoon.

(5) The directed fishery quota in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea for the period June 1, 1999, through May 31, 2000, is 1,986 mt dw for the longline/harpoon fishery and 41 mt dw for the drift gillnet fishery.

(6) The annual directed fishery quota for the period June 1, 1999, through May 31, 2000 for swordfish in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea is 2,027 mt dw, divided into two semi-annual quotas as follows:

(i) For the semi-annual period June 1 through November 30:

(A) 20.5 mt dw that may be harvested by drift gillnet; and

(B) 993 mt dw that may be harvested by longline and harpoon.

(ii) For the semi-annual period December 1 through May 31:

(A) 20.5 mt dw that may be harvested by drift gillnet; and

(B) 993 mt dw that may be harvested by longline and harpoon.

(7) The annual directed fishery quota for the period June 1, 1997 through May 31, 1998 for swordfish in the South Atlantic Ocean is 187.5 mt dw, divided into two semi-annual quotas as follows:

(i) For the semi-annual period June 1 through November 30, 93.75 mt dw that may be harvested by longline and harpoon; and

(ii) For the semi-annual period December 1 through May 31, 93.75 mt dw that may be harvested by longline and harpoon.

(c) *Incidental catch quota.* The annual bycatch quota in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea for swordfish is 300 mt dw; no incidental catch is permitted for the South Atlantic swordfish stock.

(d) * * *

(4) Total landings above or below the specific annual quota will be subtracted from, or added to, the following year's quota. Any adjustments to the 12-month directed-fishery quota will then be apportioned equally between the June 1 through November 30 and December 1 through May 31 semiannual periods.

* * * * *

(e) NMFS may adjust the December 1 through May 31 semiannual directed-fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery and gear quotas are not exceeded.

* * * * *

9. In § 630.25, the heading, paragraph (a)(1) and the first sentence of paragraph (b) are revised to read as follows:

§ 630.25 Closures and incidental catch limits.

(a) *Notification of a closure.* (1) When a directed-fishery annual, semi-annual, or gear quota specified in § 630.24 is reached, or is projected to be reached, NMFS will publish a notification in the **Federal Register** closing the entire directed fishery for fish from the North Atlantic swordfish stock, the South Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. The effective date of such notification will be at least 14 days after the date such notification is filed at the Office of the Federal Register. The closure will remain in effect until an additional directed-fishery or gear quota becomes available.

* * * * *

(b) *Special set-aside for harpoon gear.* The procedures of paragraph (a)(1) of this section notwithstanding, during the June 1 through November 30 semi-annual period, swordfish not exceeding 9,752 kg dw, may be set aside for the harpoon segment of the North Atlantic swordfish fishery. * * *

* * * * *

[FR Doc. 97–19588 Filed 7–22–97; 9:51 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 62, No. 143

Friday, July 25, 1997

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

Research, Education, and Economics; Nomination Solicitation

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Nomination Solicitation.

SUMMARY: The United States Department of Agriculture is soliciting nominations for vacancies on the National Research, Education, Extension and Economics Advisory Board.

DATES: Submit nomination responses on or before August 15, 1997.

SUPPLEMENTARY INFORMATION: The 30 members on the National Research, Education, Extension, and Economics Advisory Board were appointed in 1996 with each member having a 1, 2, or 3-year term. The Department is seeking nominations for the following 10 vacancies representing the following categories:

Category A: National Farm Organizations
Category C: Food Animal Commodity Producers
Category F: National Crop Commodity Organizations
Category K: National Human Health Associations
Category P: Hispanic-serving Institutions
Category Q: American Colleges of Veterinary Medicine
Category S: Transportation of Food and Agriculture Products (foreign and domestic)
Category U: Food and Fiber Processors
Category Z: International Development/ Private Sector Organizations
Category CC: National Social Science Associations

The incumbents in these categories can be reappointed. However, the Department seeks nominations for these vacancies and all nominations will be considered. Equal opportunity practice, in line with USDA policies, will be followed in all appointments to the Board. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Comments: The public may file nominations by submitting OMB form 0505–0001 to the Office of the Under Secretary for Research, Education, and Economics, USDA, Room 217W, Jamie L. Whitten Federal Building, 1400 Independence Ave., SW, Washington DC. 20250–2200.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Room 212W, Jamie L. Whitten Federal Building or phone (202) 720–3803.

Done at Washington DC, this 21st Day of July, 1997.

Catherine E. Woteki,

Acting Under Secretary Research, Education, and Economics.

[FR Doc. 97–19632 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–068–1]

Regulatory Science and Risk Analysis in Agriculture; Public Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public conference and request for agenda topics.

SUMMARY: The new USDA Center for Excellence in Regulatory Science and Risk Analysis at the University of Arkansas at Pine Bluff is holding a public conference on current models and emerging trends in agricultural regulation. The target audience for this conference includes persons from industry, academia, public interest groups, and Federal and State government who are interested in understanding and improving the regulatory process for agricultural issues. The agenda for this conference is still being planned and suggestions for topics of general interest are requested.

PLACE, DATES, AND TIME OF MEETING: The conference will be held at the University of Arkansas, Pine Bluff, AR, on September 16 and 17, 1997. If you plan to attend the conference, please register by August 19, 1997. Lodging for conference attendees is available at a special conference rate at the Holiday Inn-Pine Bluff, 2 Convention Center Plaza, Pine Bluff, AR 71601–5066 (telephone 501–535–3111).

FOR FURTHER INFORMATION CONTACT: To register for the conference, or for further information about it, contact Cecil Oliver, Regulatory Science Center of Excellence, School of Agriculture, Fisheries and Human Sciences, University of Arkansas at Pine Bluff, PO. Box 4990, Pine Bluff, AR; (501) 543–8564. To post or review suggested topics for the conference agenda, access the World Wide Web address http://www.aphis.usda.gov/ppd/conference. You may also mail suggested topics to Docket No. 97–068–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238; or e-mail them to rkelly@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The USDA Center for Excellence in Regulatory Science and Risk Analysis at the University of Arkansas at Pine Bluff (the Center) exists to merge the experience of university faculty and Federal agencies in conducting research and outreach education that advances understanding of, and compliance with, Federal statutes. The Center brings together professionals from academic, government, industry, and public interest environments to explore regulatory issues, identify useful regulatory tools, and develop strategies to more effectively meet the goals of regulatory agencies and the public interest in a world where agricultural issues and policies are rapidly changing.

The United States Department of Agriculture believes its partnership with the Center supports worthwhile advances in the quality of regulatory science, and that the Center may also serve as the host for activities that develop strategies and tools that contribute to discussing and analyzing individual regulatory issues.

The upcoming Conference on Regulatory Science and Risk Assessment in Agriculture has two primary objectives:

1. To identify emerging regulatory issues in agriculture; and

2. To develop regulatory strategies for addressing these regulatory issues.

The conference agenda will include a mixture of speaker presentations, discussion groups, and workshops. Some of the themes explored at the conference will include:

1. Adapting regulatory systems to facilitate trade under World Trade Organization principles (transparency, equivalency, science-based);

2. Deciding when to regulate, and how to develop threshold criteria to determine when an agricultural problem requires government regulation;

3. Developing alternatives to government regulation such as voluntary compliance and self-regulation by industry, or risk reduction through public awareness and education;

4. Formal partnerships between industries and government agencies; and

5. How risk analysis is changing concepts of regulation development, compliance, inspections, and tolerances.

We are in the process of planning the agenda for the conference, which will be held in Pine Bluff, AR, on September 16 and 17, 1997. We are seeking specific suggestions for discussion or workshop topics from potential attendees before finalizing the agenda. Consistent with efforts to reinvent government and to improve how programs are delivered, we would like to invite potential attendees to present their ideas and suggestions concerning fruitful topics for the agenda.

Please submit, on or before August 15, 1997, proposed titles and descriptions for new agenda topics, or comments on the agenda topics identified above. If you wish to make a presentation or lead a discussion on a particular topic, please state so and indicate the amount of time you believe your topic would require. We cannot guarantee that all suggested topics will be included in the final agenda, but we will try to include all topics to the extent the time scheduled for the conference allows.

The best way to suggest topics for the conference is to post them to the World Wide Web address identified under **FOR FURTHER INFORMATION CONTACT** above. Suggestions posted to that address will be visible on the Web, and may provoke support or discussion by other commenters.

Done in Washington, DC, this 21st day of July 1997.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–19630 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension for and revision to an information collection currently approved in support of the Fresh Irish Potato Diversion Program, 1996 Crop pursuant to section 32 of the Act of August 24, 1935, as amended (Section 32).

DATES: Comments on this notice must be received on or before September 23, 1997 to be assured consideration.

ADDITIONAL INFORMATION: Contact James K. Tegeler, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone (202) 720–3110.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Fresh Irish Potato Diversion Program, 1996 Crop.

OMB Control Number: 0560–0145.

Expiration Date: November 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0145, as identified above, is needed to enable FSA to effectively implement the Fresh Irish Potato Diversion Program, 1996 Crop, under related reporting and record keeping requirements.

The Secretary of Agriculture has determined that the 1996 crop of fresh Irish potatoes is in surplus supply, and that the domestic consumption of such potatoes will be encouraged by using funds allocated under section 32 to divert the fresh Irish potatoes. The program is administered by the Agricultural Marketing Service, and implemented by the Farm Service Agency. The application and reporting process is implemented by the county FSA office.

Potato producers must complete a FSA–117, Potato Diversion Program Application for Participation (FSA–117), for each method of diversion requested. The general purpose of Form FSA–117 is to provide AMS and FSA a basis to determine whether or not the producer meets the eligibility requirements to participate in the program. The program will be carried out provided funding is available, and provided further that participant's potatoes meet grading criteria.

The general purpose of an Invoice and Certificate of Inspection and Diversion (FSA–118), is: (1) To allow producers to certify and file a claim for payment; (2) to allow Federal or Federal-State inspectors to certify the quantity and quality of the potatoes; and (3) in the case of the livestock feed diversion method, allow the producer to provide additional information relative to disposition to the county FSA office.

The general purpose of ''Letter of Release Potato Diversion Program'' (FSA–120), is to allow the producer to release potatoes that will not be diverted.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 14 minutes per response.

Respondents: Individual, partnership, association, or corporation that grew 1996 crop potatoes for market and are in possession of the potatoes as of May 30, 1997.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 11,000 hours.

Proposed topics for comments include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to 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. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget, Washington, D.C. 20503 and to James K. Tegeler, Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone (202) 720–3110. Copies of the information collection may be obtained from James Tegeler at the above address.

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.

OMB is required to make a decision concerning the collection(s) of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This notice does not affect the deadline for the public to comment to the Department of Agriculture on any substantive regulations that may be the subject of other notices.

Signed at Washington, DC, on July 13, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–19580 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Big Red Timber Sale, Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District, Routt County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of the proposed East Big Red Timber Sale. Estimated dates for filing the draft EIS is November, 1997, followed by the final decision in February, 1998. The area location is approximately 34 miles north of Steamboat Springs, Colorado, in sections 13, 23, 25, & 36 of T11N, R85W, sections 7, 8, 16, 17, 18, 19, 20, 30, 31, & 32 of T11N, R84W, sections 5 & 6 of T10N, R84W.

All lands within the project area are currently allocated to Management Area 7E, as described in the current Forest Land Management and Resource Plan for the Routt National Forest, approved in 1983. Forested lands within this management area are designated as suitable for timber production by the forest plan. Following is a summary of the general forest plan direction for the area.

Management Area 7E-Timber Production: Emphasis is placed on wood fiber production and utilization of a size and quality suitable for sawtimber. Timber harvest must meet a Visual Quality Objective (VQO) of partial retention in foregoing areas as seen from open arterial and collector roads as well as main trails. A VQO of modification applies to all other areas.

The Forest Plan is being revised as required by the National Forest Management Act. The preferred alternative for the forest plan revision (alternative C as described in the DEIS) allocates the majority of the project area to management area 5.13, which is to be managed for the production of commercial wood products. This allocation includes most of the stands proposed for harvest. A few smaller areas allocated to management area 5.11, provides for a mix of forest products, forage, wildlife habitat and recreation.

DATES: Written comments and suggestions on the draft Environmental Impact Statement should be received on or before the 45 day period from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice 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 contentions. *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 meaningfully 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 the 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.

ADDRESSES: The Responsible Official is Jerry E. Schmidt, Forest Supervisor, Medicine Bow-Routt National Forest, 2468 Jackson Street, Laramie, Wyoming 82070–6535. Written comments and suggestions concerning the scope of the analysis should be sent to Sherry Reed, District Ranger, Hahns Peak/Bears Ears Ranger District, P.O. Box 771212, Steamboat Springs, Colorado 80477.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

FOR FURTHER INFORMATION CONTACT: Kirby Self, Interdisciplinary Team Leader, Hahns Peak/Bears Ears Ranger District. Phone: (970) 879–1870.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposal is to harvest and manage approximately 880 acres of mature sawtimber stands within the analysis area. The proposal includes the following activities:

- Treatment by harvesting approximately 8.0 MMBF of commercial timber using both even and uneven-aged silvicultural systems. Approximate acres to be treated:

  380 acres—shelterwood & group selections

  470 acres—clearcut

  25 acres—commercial thin
- Construction of approximately 18 miles of specified road and 2 ½ miles of road reconstruction.
- Post sale work could include, but is not limited to; regeneration and stocking surveys to assure proper reforestation of harvested stands; noxious weed spraying; and thinning of past harvest areas.

Other Opportunities

- Remedy road maintenance and erosion problems on road 500.1D by relocating. Obliteration of existing road to eliminate trespass concerns and maintenance problems.
- Reduce sediment production from the Hare Trail (FDT 1199) by relocating or eliminating trail.
- Reduce fuel loading in the head of the Middle Fork Little Snake River.

All proposed activities would take place within the East Big Red analysis area, and are planned for implementation starting in 1999.

Decision to Be Made

The Medicine Bow-Routt Forest Supervisor will need to make an informed decision about the selection of one alternative among several. The issues and alternatives developed by the IDT members and public commenters must be analyzed and displayed clearly. From the project record alone, the Forest Supervisor and others who may review the decision, must be able to fully understand the consequences of implementating the selected alternative.

Preliminary Issues

- Effects of timber harvest and road construction on watershed condition and thus water quality.
- Effects of timber harvest on wildlife habitat with potential reduction of big game hiding cover along open roads and around meadows from timber harvest, and also the loss of old growth and goshawk habitat.
- Effects on range management.
- Impacts on recreation facilities such as trails and dispersed camp sites.
- Effects on visual quality primarily from forest roads 550 and 505, and those roads and units which are adjacent to trails 1199, 1203, and 1204.
- Effects on roadless character. Several units and roads are proposed within the Dome Peak Roadless Area.

Scope of the Analysis

This environmental analysis shall consider the environmental consequences of the proposed action, as well as alternatives reasonably implemented, while meeting the purpose and need of the action.

Dated: July 11, 1997.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 97–19590 Filed 7–24–97; 8:45 am]

BILLING CODE 3410–GM–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: August 5, 1997.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 97–19760 Filed 7–23–97; 10:11 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 25, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 2, 23, 30 and June 6, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 24077, 28443, 29327 and 31065) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Head Lantern
6230–01–387–1399

Services

Administrative Services
Nevada Field Office, Las Vegas, Nevada
Janitorial/Custodial
U.S. Department of Interior/Bureau of Reclamation, Lower Colorado Regional Office, Boulder City, Colorado
Janitorial/Custodial
U.S. Courthouse, 1030 SW 3rd

Avenue, Portland, Oregon
Janitorial/Custodial
U.S. Courthouse and Federal Building, 5th & Hamilton Streets, Allentown, Pennsylvania
Janitorial/Custodial
Wheeling USARC, Ohio County Airport Industrial Park, Wheeling, West Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–19624 Filed 7–24–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 25, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Dover Air Force Base, Delaware)
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland

Services

Administrative Services
Social Security Administration, Oxmoor South Industrial Park, Birmingham, Alabama
NPA: Easter Seals Occupational Rehabilitation Center, Birmingham, Alabama
Janitorial/Custodial
New Boston Courthouse, Northern Avenue, Boston, Massachusetts
NPA: Work, Incorporated, North Quincy, Massachusetts
Laundry/Dry Cleaning Service
U.S. Marine Corps Base, Quantico, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Wrench, Pipe

5120–00–277–1461
5120–00–277–1486
5120–00–277–1485

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–19625 Filed 7–24–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Baltimore

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) program to operate the Baltimore MBDC. The Baltimore, Maryland solicitation was originally published in the **Federal Register**, Monday, December 23, 1996, Vol. 61, No. 247, Page 67531.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: July 21, 1997.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 97–19603 Filed 7–24–97; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072197C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team will hold a public meeting.

DATES: The meeting will begin on Monday, August 11, 1997 at 1:00 p.m. and will continue through Friday, August 15, 1997. The Tuesday through Friday sessions will begin at 8:00 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review recent groundfish stock assessments and develop recommendations for 1998 harvest levels and management measures. Agenda items scheduled also include inseason management projections, as well as preparation and review of fishery management plan amendments to address essential fish habitat, bycatch, overfishing, and other provisions required by the Magnuson-Stevens Fishery Conservation and Management Act. The Groundfish Management Team will also discuss stock assessment and fishery evaluation preparation plans and assignments.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 21, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–19656 Filed 7–24–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072197F]

Marine Mammals; Public Display Permit (PHF# 870–1391)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that M&M Amusement Park, Calle Gilberto Rolin L16, Caguas, PR 00725, has applied in due form for a permit to import three South American sea lions (*Otaria flavescents*) and two Atlantic bottlenose dolphins (*Tursiops truncatus*), currently in the custody of Ricardo Roca, Waterland - Mundo Marino, Valle, Colombia, for purposes of a traveling public display exhibit in several Puerto Rican cities.

DATES: Written or telefaxed comments must be received on or before August 25, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9731 Executive Center Drive North, St. Petersburg, FL 33702, (206/526–6150).

Written comments or requests for a public hearing on this application, should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such a hearing is at the discretion of the Director, Office of Protected Resources.

Written comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to import five marine mammals, from Santo Domingo, Dominican Republic, where they are currently on tour, to Puerto Rico for a similar traveling exhibit in the cities of San Juan, Ponce and Mayaguez. The applicant has applied for an Exhibitor's License from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) under the Animal Welfare Act. APHIS has conducted a pre-licensing inspection of the proposed site at Parque Luis Munoz Marin, Hato Rey, San Juan, and each subsequent site will be inspected by APHIS prior to the transport of the marine mammals. As any issues relating to the care and maintenance of captive marine mammals are within the purview of APHIS, under the AWA, a copy of the application is also being sent to APHIS for review.

Each exhibit site will be open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee and will offer an educational program.

In addition to determining whether the applicant meets the public display criteria provided in sec. 104 (2)(a)(i-iii) of the MMPA, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 18, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–19655 Filed 7–24–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 25, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 17, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 11

SYSTEM NAME:

Southeast Asia Operational Casualty Records *(August 8, 1995, 60 FR 40348).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'POW/Missing Personnel Office Files'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals designated as prisoners of war or missing personnel while affiliated with the Military services of the United States. These individuals are Military personnel serving during the Korean Conflict, the 'Cold War Era', the Southeast Asian Conflict, the Persian Gulf Conflict or during any campaign or hostile action involving U.S. Military intervention or declared war. Also included in the system are persons having knowledge of those designated prisoners of war or missing personnel, who themselves may be U.S. Military, non-military U.S. citizens, or non-U.S. citizens. These individuals include, but are not limited to, returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.'

* * * * *

PURPOSE(S);

Delete entry and replace with 'Information is collected to develop a detailed and comprehensive body of information concerning U.S. Military casualties. Data are used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in campaigns and wars involving the U.S. Military.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are retained until no longer needed to support daily operations of the Defense POW/Missing Personnel Office (DPMO). When they are no longer needed, they are subject to a classification review and then are transferred to the National Archives and Records Administration.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.'

* * * * *

DUSDP 11

SYSTEM NAME:

POW/Missing Personnel Office Files.

SYSTEM LOCATION:

Defense Prisoner of War/Missing Personnel Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals designated as prisoners of war or missing personnel while affiliated with the Military services of the United States. These individuals are Military personnel serving during the Korean Conflict, the 'Cold War Era', the Southeast Asian Conflict, the Persian Gulf Conflict or during any campaign or hostile action involving U.S. Military intervention or declared war. Also included in the system are persons having knowledge of those designated prisoners of war or missing personnel, who themselves may be U.S. Military, non-military U.S. citizens, or non-U.S. citizens. These individuals include, but are not limited to returnees, confidential sources, representatives of concerned organizations, resident aliens, and foreign sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records included in the system are operational and information reports, biographic records, personal statements and correspondence, returnee debriefings, interviews and media reports, and other relevant materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 138, Assistant Secretaries of Defense; DoDD 5111.07, Assistant Secretary of Defense for International Security Affairs; DoDD 5110.10, Defense Prisoner of War/Missing Personnel Office; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected to develop a detailed and comprehensive body of information concerning U.S. Military casualties. Data are used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate National policy with respect to casualties in campaigns and wars involving the U.S. Military.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files in folders maintained in filing cabinets and automated files on magnetic media.

RETRIEVABILITY:

Retrieved by any or a combination of: individual's name, Social Security Number, or source reference number (in the case of a classified source).

SAFEGUARDS:

Records are maintained in a controlled access office and are stored in a secured vaulted work area. Records are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information.

RETENTION AND DISPOSAL:

Records are retained until no longer needed to support daily operations of Defense Prisoner of War/Missing Personnel Office (DPMO). When they are no longer needed, they are subject to a classification review and then are transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Prisoner of War/Missing Personnel Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Prisoner of War/Missing Personnel Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Individual should provide full name, Social Security Number (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Prisoner of War/Missing Personnel Office, Office of the Assistant Secretary of Defense (International Security Affairs), Washington, DC 20301–2400.

Individual should provide full name, Social Security Number (if any), and date of birth, branch of military service, if applicable, as well as the requester's current address and telephone number.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources for the information are the DoD and other Federal agencies, interviews and debriefings of returnees, confidential sources and other individuals; representatives of concerned organizations; resident aliens; foreign sources; and open publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 97–19563 Filed 7–24–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability following U.S. patent 5,465,050, issued November 7, 1995, for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent entitled, ''Dynamic Range Tester,'' is an electronic instrumentation for generating two calibrated, ''real-world'' signals simultaneously, each with variable S/N for use in test and measurement of dynamic range, telecommunications, telemetry and other signal processing applications.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent identified in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Vaught, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197; tel: (301) 394–2952; fax: (301) 394–5818; e-mail: nvaught@arl.mil

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–19597 Filed 7–24–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning a Transportable Life Support System

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the

availability of U.S. Patent No. 5,626,151 entitled ''Transportable Life Support System'' and issued May 6, 1997 for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is a stretcher-based mini-intensive care unit that incorporates resuscitative and life-sustaining capabilities into a universally adaptive platform for trauma management and unattended patient support. It allows the transport of medically unstable patients and fits into existing evacuation platforms. The system is specifically designed for use in battlefield and mass casualty situations, and includes a base, a stretcher and a canopy. The system incorporates medical equipment that includes a ventilator, an oxygen source, an environmental control unit, a suction unit, a plurality of physiologic sensors, an intravenous fluid pump, a drug infusion pump, and a defibrillator. The medical equipment is controlled by a computer contained within the base, and a receiver/transmitter is included in the base for transmitting information to, and receiving information from, a remote health care provider.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–19594 Filed 7–24–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 25, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 15, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S400.20 CA

SYSTEM NAME:

Day Care Facility Registrant and Applicant Records.

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and their sponsors who are enrolled in, or have applied for admission to, DLA-managed day care facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the registrant's or applicant's name; Social Security Number; birth date; home address and telephone number; emergency contact data; immunization, allergy, medication, and injury records; special care requirements and physical limitations; and sponsor name and contact points.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Agency powers, delegation of authority; 10 U.S.C. 133, Organization and powers, Under Secretary of Defense for Acquisition and Technology; 10 U.S.C. 2809 and 2812, Military construction of child care facilities; 42 U.S.C. Chap. 127, Coordinated services for children, youth, and families; 40 U.S.C. 490b, Child care services for Federal employees; 42 U.S.C. Chap 67, Child abuse programs; Pub. L. 101–189, Title XV, Military Child Care Act of 1989; E.O. 9397 (SSN); and DoD Instruction 6060.2, Child Development Programs.

PURPOSE(S):

To provide day care services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

To federal, state, and local officials involved with child care or health services for the purpose of reporting suspected or actual child abuse.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved by registrant's or applicant's name or Social Security Number, and sponsor's name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Corporate Administration, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency (DLA)

Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA-CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, HQ DLA-CAAV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information is provided by the registrant or the registrant's sponsor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–19561 Filed 7–24–97; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Special Weapons Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Special Weapons Agency, DOD.
ACTION: Notice to add a system of records.

SUMMARY: The Defense Special Weapons Agency proposes to add one record system to its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.
DATES: This action will be effective without further notice on August 25, 1997, unless comments are received that would result in a contrary determination.
ADDRESSES: Send comments to General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398
FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.
SUPPLEMENTARY INFORMATION: The Defense Special Weapons Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 15, 1997, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDSWA 018

SYSTEM NAME:

Travel Management Program.

SYSTEM LOCATION:

Primary location: Headquarters, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Secondary location: Defense Special Weapons Agency subordinate commands.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Any person, government or private, who travels on official business for the Defense Special Weapons Agency or who submits a request for payments of a travel advance or travel claim to the Defense Special Weapons Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to official travel of individuals, including travel orders, per diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individual's name, Social Security Number, home address and telephone number, employing office name and telephone number, and electronic banking identification codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2105, 5561, 5564, 5701–5708, 5721–5730, 5742; 50 U.S.C., app. 2160; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures, support documentation requirements, and provides reimbursement accounting for persons on official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DSWA's compilation of system of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Receipts for travel/lodging will be maintained in a central location in the Office of the Comptroller. Electronic data is maintained on a networked computer system with access safeguards. The Travel Manager software Plus Program being utilized is

operated under a Department of Defense Pilot and is connected to the DSWA Green Local Area Network. This automated system includes forms generation, electronic document routing, electronic document approval, enforcement of agency defined limits, automated funds availability verification and electronic interface to mainframe accounting.

RETRIEVABILITY:

Files may be retrieved by name or Social Security Number of individual or by travel order number.

SAFEGUARDS:

Paper records are kept in filing cabinets and other storage places within these offices. Work areas are sight controlled during normal duty hours. Buildings are protected by security guards and an intrusion alarm system.

Access to computer records is controlled by a user identification and password system. Personnel having access are limited to those having a need-to-know who have been trained in handling Privacy Act information. Additionally physical access to video display terminals is under strict supervisory control, access to computer peripheral equipment is controlled, reports are issued that are used to monitor use of the system, output products and storage media is labeled to warn individuals that they contain personal information subject to the Privacy Act.

RETENTION AND DISPOSAL:

The automated record is retained 2 years following the final settlement of a travel claim. Records recorded on tapes or disks are disposed of by degaussing or erasing. A history hard copy file is maintained for 2 years and then retired to the Records Center. They are destroyed 7 years after retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Logistics and Engineering, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

The individual should make reference to the office where assigned or affiliated, dates of travel and provide Social Security Number for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Office of General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

The individual should make reference to the office where assigned or affiliated, dates of travel and provide Social Security Number for positive identification.

CONTESTING RECORD PROCEDURES:

The DSWA rules for contesting records and appealing initial agency determinations are published in DSWA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

From the individual, the systems administrator, or the vendor of travel and related service. Supporting documentation is provided from the associated travel order, division, service providers and the Defense Finance and Accounting Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–19560 Filed 7–24–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Notice of Availability of the ''Annual Report to Congress on the Status of the Harbor Maintenance Trust Fund for Fiscal Years 1995 and 1996''

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: This notice is to inform the general public of the availability of the ''Annual Report to Congress for Fiscal Years 1995 and 1996.'' Single copies of the report may be obtained free of charge.

FOR FURTHER INFORMATION CONTACT: Mr. DuWayne A. Koch, Office of Policy, Office of the Chief of Engineers at (202) 761–4312 or fax (202) 761–4312.

SUPPLEMENTARY INFORMATION: The Harbor Maintenance Fee was authorized under Sections 1401 and 1402 of the Water Resources Development Act of 1986, Public Law 99–662. This law imposed a 0.04 percent fee on the value of commercial cargo loaded (exports and domestic cargo) or unloaded (imports) at ports which have had Federal expenditures made on their behalf by the U.S. Army Corps of Engineers since 1977. Section 11214 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–580, increased the Harbor Maintenance Fee to 0.125 percent, which went into effect on January 1, 1991. Harbor Maintenance Trust Fund monies are used to pay up to 100 percent of the Corps eligible Operation and Maintenance expenditures for the maintenance of commercial harbors and channels.

Section 330 of the Omnibus Budget Reconciliation Act of 1992, Public Law 102–580, requires that the President provide an Annual Report to Congress on the Status of the Trust Fund. The release of this report is in compliance with this legislation.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–19596 Filed 7–24–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Disposal and Reuse of Naval Construction Battalion Center Davisville, North Kingstown, Rhode Island

SUMMARY: The Department of the Navy (Navy) pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, hereby announces its decision to dispose of Naval Construction Battalion Center Davisville (CBC Davisville), North Kingstown, Rhode Island.

Navy intends to dispose of the property in a manner that is consistent with the Preferred Development Plan that was set forth in the Comprehensive Reuse Plan prepared by the Davisville Naval Construction Battalion Center Base Reuse Committee (BRC), a committee appointed by the Governor of Rhode Island to formulate a redevelopment plan for CBC Davisville. The Preferred Development Plan was adopted by the State of Rhode Island and Providence Plantations and the Town of North Kingstown.

The Preferred Development Plan, described in the Reuse Plan as Alternative Reuse Scenario 4, is identified in the Final Environmental Impact Statement (FEIS) as the Preferred Alternative. This Plan proposes a mixed

land use approach that would use about half of the Base for commercial and industrial activities and reserve the remaining property for recreational activities and open space.

In deciding to dispose of CBC Davisville in a manner that is consistent with the Preferred Development Plan, Navy has determined that a mixed land use will meet the goals of local economic redevelopment and creation of new jobs, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

Background

The 1991 Defense Base Closure and Realignment Commission recommended closure of Naval Construction Battalion Center Davisville. This recommendation was approved by President Bush and accepted by the One Hundred Second Congress in 1991. Operations at CBC Davisville ceased on April 1, 1994, and the property has been in caretaker status since that date.

The Base is located within the corporate limits of the Town of North Kingstown, about 18 miles south of the City of Providence. The 909-acre property consists of two parcels, the Main Site comprising about 839 acres and the West Davisville property comprising 70 acres (also referred to as the West Davisville Storage District) located about one mile from the Main Site.

The 839-acre Main Site is divided into six areas: the Administrative Triangle, the Warehouse Area, the Construction Equipment Department (CED) Area, the Davisville Pier Support Area, the Allen Harbor Landfill, and Calf Pasture Point. The 70-acre West Davisville property contains four warehouses.

When CBC Davisville was initially slated for closure, the Base had a third component known as Camp Fogarty that was located four miles west of the Main Site in the Town of East Greenwich. This 374-acre site contains classrooms, storage facilities, an armory, combat training areas, and rifle and pistol ranges. On January 26, 1993, Navy transferred this property to the Department of the Army for use by the Rhode Island National Guard. Thus, Navy did not consider the Camp Fogarty property in this NEPA process.

Navy published a notice of intent in the **Federal Register** on September 10, 1993, announcing that Navy would prepare an Environmental Impact Statement (EIS) to analyze the impacts of disposal and reuse of the land, buildings and infrastructure at CBC Davisville. A thirty-day public scoping period was established, and Navy held a public scoping meeting on September 28, 1993, at North Kingstown High School.

On February 25, 1994, Navy distributed a Draft Environmental Impact Statement (DEIS) to Federal, State and local agencies, interested parties and the general public. Navy held a public hearing at North Kingstown High School on March 29, 1994. During the forty-five day review period after publication of the DEIS, Federal agencies, Rhode Island State agencies, local government agencies and the general public submitted written comments.

These comments and Navy's responses were incorporated in the FEIS, which was distributed to the public on March 3, 1995, for a thirty-day review period that concluded on April 2, 1995. Navy received comments on the FEIS from the United States Environmental Protection Agency, the Rhode Island Economic Development Corporation, the Rhode Island Department of Environmental Management, the Rhode Island Department of Transportation, and the Rhode Island Historical Preservation and Heritage Commission.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the NEPA process, Navy analyzed the environmental impacts of four ''action'' alternatives and a ''No action'' alternative. The ''No action'' alternative would leave the property in a caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

As the basis for its analysis of the ''action'' alternatives, Navy relied upon the reuse and redevelopment alternatives developed by the BRC when planning future uses of the closed facilities. The BRC analyzed various redevelopment scenarios and land uses, prepared a Comprehensive Reuse Plan, and selected the Preferred Development Plan. The State of Rhode Island and Providence Plantations adopted the Preferred Development Plan and presented it to the Department of the Navy on January 11, 1994.

The Preferred Alternative, designated in the FEIS as Alternative Reuse Scenario 4, is the Preferred Development Plan that was set forth in the Comprehensive Reuse Plan. This alternative proposes a mix of commercial and industrial facilities, institutional and office spaces, a dredge material disposal area, an expanded marina, a conference center, a park, and open space.

At the Main Site, the Administrative Triangle would be used for offices, educational facilities, and open space. The Warehouse Area would contain an industrial park and a medical facility. The CED Area is located in the designated safety zone for the runway of the adjacent Quonset Airport. This area would have light industrial and administrative facilities, and development would be limited as a result of the overlying safety zone. Part of this area would be used to dispose of dredge material generated by dredging operations at the adjacent Davisville piers. Another part of this area would be used to expand the existing marina at Allen Harbor.

The Davisville Pier Support Area would contain waterfront industrial activities, a conference center, and residential facilities. The Allen Harbor Landfill would be used as open space. Calf Pasture Point would be used as a park and public beach. The West Davisville area warehouses would be used for storage and light industrial activities.

In the NEPA process, Navy considered a second ''action'' alternative, described in the FEIS as Alternative Reuse Scenario 1, which also proposed a mixed use redevelopment. The Administrative Triangle would contain offices, educational facilities, and open space. The Warehouse Area would consist of an industrial park and a medical facility. As in the first ''action'' alternative, the CED Area, located in the designated safety zone for the Quonset Airport runway, would contain open storage and industrial facilities, a dredge material disposal area, and a marina. Development here would be similarly limited as a result of the overlying safety zone.

The Davisville Pier Support Area would be used as a staging and storage area for pier activities, for light industrial facilities, and for a conference center. The Allen Harbor Landfill and Calf Pasture Point would be used for passive recreational and conservation activities. The West Davisville property would be used as storage facilities and for future industrial development.

A third ''action'' alternative, described in the FEIS as Alternative Reuse Scenario 2, proposed another mixed use redevelopment. The Administrative Triangle would be used

for offices, educational facilities, and open space. The Warehouse Area would contain an industrial park and a medical facility. The CED Area would be used for recreational activity and a town public works facility. The Davisville Pier Support Area would be used as a staging and storage area for pier activities and as a support area for fishing and aquacultural businesses. The Allen Harbor Landfill and Calf Pasture Point would be used for passive recreational activity and military training exercises. The West Davisville property's warehouses would be used for storage and light industrial activities.

The final alternative, described in the FEIS as Alternative Reuse Scenario 3, proposed a mixed use similar to that set forth in the Preferred Development Plan. The Administrative Triangle would be used for offices, educational facilities, and open space. The Warehouse Area would consist of an industrial park and a medical facility. The CED Area would be developed as a recreational theme park. The Davisville Pier Support Area would be used as a staging and storage area for pier activities, light industrial facilities, and a residential neighborhood. The Allen Harbor Landfill and Calf Pasture Point would be used for active recreational activity related to the theme park. The West Davisville property would be used for storage and light industrial activities.

Environmental Impacts

Navy analyzed the potential impacts of the four ''action'' alternatives and the ''No action'' alternative for their effects on adjacent land use, aesthetics, terrestrial and aquatic habitats, wetlands and floodplains, water quality, topography and soils, air quality, noise, transportation, socieconomics, infrastructure and utilities, community services, cultural resources, and planned environmental remediation. This Record of Decision focuses on the impacts that would likely result from implementing the Preferred Development Plan set forth in the Comprehensive Reuse Plan proposed by the State.

Implementation of the Preferred Development Plan would not result in significant impacts on adjacent land use, because this proposal is generally compatible with surrounding land uses. Minor potential land use impacts could result, however, along the northern edge of CBC Davisville where administrative and light industrial activities would be located near existing residences. Thus, the Preferred Development Plan provides for a 75-foot wide landscaped area along the northern boundary of the Administrative Triangle and the CED Area to provide a buffer between these incompatible land uses.

The Preferred Development Plan would not result in significant adverse impacts on aesthetics. The acquiring entity would be responsible for site improvements, including new streets, lighting, and landscaping as described in the Plan. When implemented, these improvements will enhance the aesthetic quality of the CBC Davisville property.

Implementation of the Preferred Development Plan would not result in significant impacts on terrestrial and aquatic habitats. Indeed, it would cause negligible impacts on most property at the Base and only moderate impacts on those areas where intense uses of the land will occur. For example, the increased activity and noise associated with active recreational use of Calf Pasture Point will disturb the terrestrial habitat there. Similarly, in the CED Area, existing vegetation would be removed as a result of the dredge material disposal operation. Additionally, the aquatic habitat in the CED Area would be affected by expansion of the Allen Harbor marina.

There would be no significant impacts on species listed on the Federal Threatened or Endangered Species List, because none have been reported present at CBC Davisville. However, transient bald eagles and peregrine falcons could visit the property during their migration periods. The United States Fish and Wildlife Service has informed Navy that the proposed redevelopment would not cause any adverse effects on these species.

Two hundred eighty-seven acres of property at CBC Davisvillle are located in the 100-year floodplain. Forty-six of those acres have been proposed for redevelopment, and the rest will remain undeveloped. Any building constructed within that floodplain must comply with the structural design provisions of the National Flood Insurance Regulations, 23 CFR 650.115. Under the Preferred Development Plan, about seventy acres of wetlands on the Base will be protected from future development.

The Preferred Development Plan would not likely cause any significant impacts on water quality. Any redevelopment near streams, wetlands, and shorelines must, of course, comply with the development policies of Rhode Island's Coastal Resources Management Program. Coastal Resources Management Council Regulations 04 000 010, Part Three.

There would not likely be any significant increase in uncontrolled stormwater runoff into streams, because the acquiring entity must implement the stormwater management practices that are prescribed by Rhode Island's Water Quality Regulations. RIDEM WQM 04 000 010 Section 300. Any activities that may affect water quality, *i.e.*, by sedimentation and erosion, must first be reviewed under the State's water quality certification program. Rhode Island Water Quality Regulations, RIDEM DWR 12 190 001 Rules 1–22. A Rhode Island Pollution Discharge Elimination System permit will be required for any development project that is five acres or larger. Regulations for Rhode Island Pollutant Discharge Elimination System, RIDEM DWR 12 190 003 Rules 1–60.

The proposed expansion of the Allen Harbor marina at the CED Area is incompatible with the existing water quality classification and would not likely be approved by the State. See Rhode Island Water Quality Classification Descriptions, RIDEM DWR 190 001 Appendix A, and Rhode Island Water Criteria for Classifications of Waters of the State, RIDEM DWR 14 180 001. Thus, to implement the Preferred Development Plan, the acquiring entity must obtain a change in the water quality classification from Rhode Island's Department of Environmental Management.

The Preferred Development Plan proposes to build a dredge material disposal facility in the CED Area adjacent to Allen Harbor. This facility would incorporate runoff interceptors, *e.g.*, engineered dikes and staked hay bales, to protect the adjacent wetlands and Allen Harbor from silt-laden runoff. The acquiring entity will be responsible for obtaining applicable environmental permits and approvals for this project as required by Rhode Island's Coastal Resources Management Program. Coastal Resources Management Council Regulations 04 000 100, Parts Two and Three.

Implementation of the Preferred Development Plan would not significantly affect the topography or soils at CBC Davisville, because 90 percent of the land is flat and already disturbed from previous development.

Redevelopment of the Base under the Preferred Development Plan would affect local ambient air quality. The extent to which the air quality would be affected will be determined by the nature and extent of stationary sources that are developed on the property and the amount of mobile source emissions. Industrial activities with air contaminant sources will be required to obtain the necessary approvals and permits from Rhode Island's Department of Environmental Management before they may operate on the property. Air

Pollution Control Regulations, RIDEM DAW 12 031 009, Regulation No. 9.

With respect to mobile sources, ambient air quality in the vicinity of CBC Davisville will be affected by motor vehicle traffic associated with businesses that locate on the property. However, due to the relatively small increase in the number of vehicles (about 4,700) associated with redevelopment over a 20-year period, the increase in regional ozone attributable to the redevelopment would be negligible.

As a result of implementing the Preferred Development Plan, traffic levels at the intersections of Route 1 and Roger Williams Way, Route 1 and Newcomb Road, Davisville Road and Roger Williams Way, and Devil's Foot Road and Namcook Road may produce emissions that exceed the one-hour National Ambient Air Quality Standard for carbon monoxide. 40 CFR 50.8. However, these potential impacts would be mitigated by the construction of a planned, new access route that would link Route 4 with the Quonset Point/ Davisville area.

Implementation of the Preferred Development Plan would not result in significant long term impacts on the ambient noise environment. The construction of a 75-foot wide landscaped area along the northern boundary of the Administrative Triangle and CED Area will mitigate potential noise impacts on the nearby residential area arising out of industrial activity. While another residential area borders Calf Pasture Point, that property would not be redeveloped under the Preferred Development Plan.

There would not be any significant impacts on transportation arising out of implementation of the Preferred Development Plan. The plan would redevelop CBC Davisville to provide office and institutional space, warehouses, industrial facilities, and pier support facilities. These activities would increase automotive, truck, rail, and marine traffic over current levels at the Base. Although the existing rail system on the Base is sufficient to accommodate these reuse proposals, it will be necessary to improve the port facilities to accommodate the projected increase in marine traffic. The port improvements described in the Preferred Development Plan would be adequate to support those increases.

Access to and from the regional transportation routes, including Route 4, Route 1, and Interstate Highway 95, currently involves delays at the intersections of Davisville Road and Roger Williams Way and Devil's Foot Road and Namcook Road. In order to mitigate existing and future transportation problems at these intersections, a new access route linking Route 4 with the Quonset Point/ Davisville area will be built by the Rhode Island Department of Transportation.

Implementation of the Preferred Development Plan would not result in any significant adverse socioeconomic impacts on the local community. Indeed, the Preferred Development Plan would create about 4,700 new jobs. While the plan may cause a modest increase in local population, it is likely that many unemployed and underemployed residents will assume the new jobs. In any case, the redevelopment would occur gradually over a 20-year period that will minimize growth problems in both the town and the county.

The Preferred Development Plan would have various impacts on the community's infrastructure and utilities. The wastewater treatment plant has a capacity to treat 2.6 million gallons per day (mgd). The redevelopment of CBC Davisville, by itself, would not likely produce wastewater treatment requirements that exceed this capacity. In concert with other development in the area, however, redevelopment of the base would contribute to an eventual need to expand the treatment plant. Thus, the Rhode Island Economic Development Corporation will expand the plant as wastewater treatment demands warrant such improvements.

Similarly, the estimated future demand for potable water by the Quonset Point/Davisville Industrial Park (which will include the redeveloped CBC Davisville property) will increase by 2.1 mgd. In turn, this will increase daily withdrawal from the Hunt River aquifer to approximately 4.7 mgd. This is only 60 percent of the amount of water that can safely be withdrawn from the aquifer on a daily basis. However, when considered in light of the long range projections for future regional development, the redevelopment of CBC Davisville will contribute to a potentially unsafe trend in water consumption by users of the Hunt River aquifer. Thus, coordination among public water suppliers that draw on the Hunt River aquifer will be necessary to ensure that water withdrawals do not exceed the aquifer's safe daily yield.

Other utilities such as electricity and natural gas distribution systems must be expanded and upgraded to meet the energy demands that will likely be generated by the Preferred Development Plan. Thus, Narragansett Electric Company is renovating the electrical system at CBC Davisville. The acquiring entity will be responsible for providing natural gas service.

Implementation of the Preferred Development Plan would not have any significant impacts on community services in the Town of North Kingstown. It is likely that an additional 335 children will enter the local schools over a 20-year period, but this impact will be offset by additional property tax revenues generated from reuse of the Base.

Because the estimated population growth resulting from implementation of the Preferred Development Plan would occur over a 20-year period, there would not be any significant impacts on local community services, including emergency and medical services. The North Kingstown Fire Department currently provides service to the Base. While redevelopment of the property may increase the number of incidents to which the Fire Department must respond, the Department has adequate firefighting capability based on national standards.

Implementation of the Preferred Development Plan will add about 290 acres of land for use as parkland, active and passive recreational activities, and open space.

Implementaton of the Preferred Development Plan would not result in any significant adverse effects on historic or archeological sites at CBC Davisville. There are five sites on the Base that are either listed or eligible for listing on the National Register of Historic Places: Camp Endicott, the Allen-Madison House, five acres surrounding the Allen-Madison House, an archaeological site on Calf Pasture Point, and an archaeological site at the eastern end of the CED Area.

Navy and the Rhode Island Historical Preservation and Heritage Commission, as the designated Rhode Island State Historic Preservation Officer (SHPO), executed a Memorandum of Agreement (MOA) on June 2, 1997, concerning Camp Endicott. This MOA addressed the demolition of seventeen badly deteriorated Quonset Huts after recordation of the structures.

The Allen-Madison House, the five acres surrounding the house, and the archeological site on Calf Pasture Point, while not the subject of an MOA between Navy and the SHPO, are addressed in a preservation agreement between the SHPO and the Rhode Island Economic Development Corporation that was executed on March 18, 1997. The redevelopment of CBC Davisville as proposed in the Preferred Development Plan would be consistent with that preservation agreement and, thus, would not adversely affect these historic

and archeological sites. The SHPO, in a letter to Navy dated March 21, 1997, and the Advisory Council on Historic Preservation (ACHP), in a letter to Navy dated June 2, 1997, concurred with Navy's determination that the Plan would not have an adverse impact on these historic resources.

The fifth site eligible for listing on the National Register of Historic Places is an archeological site located in that part of the CED Area that was designated for waterfront commercial redevelopment. On April 14, 1997, the SHPO and the Town of North Kingstown executed a preservation agreement that covers this site. Based on this agreement, Navy determined that the Plan would not have an adverse impact on the archeological site. The ACHP concurred with this determination in a letter to Navy dated June 2, 1997.

Implementation of the Preferred Development Plan would not result in any significant impacts on existing environmental contamination at the Base. Pursuant to the Federal Facilities Interagency Agreement among Navy, the United States Environmental Protection Agency (EPA), and the Rhode Island Department of Environmental Management, Navy will ensure that environmental contamination associated with past activities at CBC Davisville is remediated as appropriate. While the cleanup of these contaminated areas may delay or complicate some redevelopment, *e.g.*, in the Warehouse Area, these delays should not be significant in light of the 20-year implementation period for the Plan.

Mitigation

Implementation of Navy's decision to dispose of CBC Davisville does not require Navy to perform any mitigation measures beyond those already accomplished, *i.e.*, the recordation of Camp Endicott. The FEIS identified and discussed those actions that would be necessary to mitigate the impacts associated with reuse and redevelopment of the Base. The acquiring entity, under the direction of Federal, State and local agencies with regulatory authority over protected resources, will be responsible for implementing mitigation measures. The implementation of mitigation measures concerning the historic and archeological property will be governed by the preservation agreements.

Comments Received on the FEIS

Navy received comments on the FEIS from the United States Environmental Protection Agency and four State agencies: The Rhode Island Economic Development Corporation (RIEDC), the Rhode Island Department of Environmental Management, the Rhode Island Department of Transportation, and the Rhode Island Historical Preservation and Heritage Commission.

The EPA asked that Navy consider deed restrictions to protect wetlands and historic and archeological sites. While deed restrictions may be used for such sites, Navy has determined that such measures are not necessary here. After discussions with State agencies and RIEDC, Navy concluded that section 404 of the Clean Water Act, 33 U.S.C. 1344, and Rhode Island's Wetlands Protection Regulations, RIDEM DGFW 12 000 001, provide stringent protection for wetlands that will adequately ensure protection and preservation of the wetlands at CBC Davisville.

Similarly, it is not necessary to incorporate restrictive covenants in the deed to ensure the protection of historic and archeological sites. The National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, the Archeological Resources Protection Act, 16 U.S.C. 470aa *et seq.*, the Memorandum of Agreement executed by Navy, the Advisory Council on Historic Preservation, and the Rhode Island Historical Preservation and Heritage Commission (dated June 2, 1997), and the preservation agreements executed by the Rhode Island Historical Preservation and Heritage Commission with RIEDC (dated March 18, 1997) and with the Town of North Kingstown (dated April 14, 1997) will ensure that these resources are appropriately protected, preserved or recorded.

The EPA also commented that a more quantitative analysis of the air quality impacts associated with projected traffic at specific intersections was warranted. The FEIS analyzed traffic volumes associated with the redevelopment of CBC Davisville. The additional volume of traffic projected over the 20-year development period is very small. Consequently, increases in ozone associated with that traffic would likely be negligible. While the potential exists to have carbon monoxide hot spots at certain intersections, the traffic volume at any particular intersection will depend upon the nature, extent and timing of activities that occur as a result of redevelopment of the Base. Additional traffic studies would be speculative, because the planned roadway projects will change existing traffic patterns.

The EPA also expressed concern about the increased demands on the Hunt River aquifer. Navy agrees with EPA that the acquiring entity must work with Federal, State and local regulatory authorities to ensure that adequate water supplies are available to satisfy the demands caused by the redevelopment of CBC Davisville and other regional development. The FEIS identified the need for development of best management and pollution prevention plans as well as the need to ensure participation of regional water suppliers in that planning process.

The Rhode Island Economic Development Corporation commented that Navy did not consider the economic impact on the State, region and town caused by redeveloping a Base where the majority of buildings and structures were old. Navy has demolished seventy structures on the Base. The remaining buildings are structurally sound.

The Rhode Island Department of Environmental Management expressed concern that the FEIS did not specifically identify any restrictions on the use of CBC Davisville property arising out of existing contamination and the level of remediation to be undertaken at specific sites. Site characterization and remediation are currently underway, and Navy will remediate the property to a level that is appropriate for the projected land use. When appropriate, deed restrictions will be used to ensure that subsequent land use is consistent with the level of remediation completed.

The Rhode Island Department of Environmental Management also requested a more detailed analysis of impacts associated with stormwater discharges at full build-out of the reuse plan. Navy analyzed stormwater discharges and the potential for contaminating bodies of water that receive them in general terms in the FEIS. A more detailed analysis of the amount and character of such discharges is not feasible at this time. Until specific site plans are developed, the amount of impervious surface and the rate of runoff cannot be determined.

When proposals for specific activities are developed, Rhode Island's Coastal Management Program regulations will require that the acquiring entity submit stormwater management plans in sufficient detail to allow an assessment of probable impact. These State regulations are intended to ensure that the manner in which future siting and construction occurs will not result in adverse impacts on water quality.

Rhode Island's Department of Environmental Management also requested a more detailed analysis of air emissions from mobile sources. As with impacts from stormwater, it is not feasible to further analyze air emissions from mobile sources until the nature and siting of particular activities are known. In neither case would further

analysis materially enhance that already set forth in the FEIS.

The Rhode Island Department of Transportation advised Navy that it would not include an analysis of traffic associated with the redevelopment of CBC Davisville in a regional traffic study that it was conducting. The Department believed that it would be speculative to project the traffic patterns associated with the redevelopment of CBC Davisville. For the same reason, Navy concluded that studying traffic patterns at this time, without knowing the nature and timing of future development, would not be feasible and would have little value.

The Rhode Island Historical Preservation and Heritage Commission agreed with the findings in the FEIS concerning cultural resources and asked Navy to incorporate restrictive covenants in deeds that convey historic property. Navy determined that the preservation agreements later entered into by the Rhode Island Historical Preservation and Heritage Commission with RIEDC and with the Town of North Kingstown would ensure adequate protection, preservation, or recordation of historic properties and that deed restrictions were unnecessary. In a letter to Navy dated March 21, 1997, the Rhode Island Historical Preservation and Heritage Commission concurred that use of the preservation agreements would not cause any adverse effect on historic properties.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note, Navy's decision was based on the environmental analysis in the FEIS and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR parts 90 and 91.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at §§ 101–47.1 through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by section 2905(b)(4) of DBCRA, may Navy apply disposal procedures other than the FPMR's prescriptions.

In section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in § 90.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g,* reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, § 91.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: By public benefit conveyance (FPMR § 101–47.303–2); by negotiated sale (FPMR § 101–47.304–8); and by competitive sale (FPMR 101–47.304–7). Additionally in section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property.

The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The Preferred Development Plan adopted by the State of Rhode Island and Providence Plantations is consistent with the prescriptions of the FPMR and § 90.4 of the DoD rule. The State has determined that this property should have several uses including

administrative, educational, commercial, light industrial, general industrial, waterfront industrial, waterfront commercial, dredge material disposal, parks and open space, conservation, buffer and greenbelt areas, and highway access areas.

The Preferred Development Plan responds to local and regional economic conditions, promotes economic recovery from the impact of CBC Davisville's closure, and is consistent with President Clinton's Five-Part Plan for revitalizing base closure communities, which emphasizes local economic redevelopment of the closing military facility and creation of new jobs as the means to revitalize these communities. 32 CFR parts 90 and 91, 59 FR 16, 123 (1994). Any resultant environmental impacts can be mitigated by the acquiring entity under the direction of Federal, State, and local regulatory requirements.

Although the ''No action'' alternative has less potential for causing adverse environmental impacts, this alternative would not foster local economic redevelopment of the CBC Davisville property and would not create new jobs. Additionally, it would not take advantage of the property's location, physical characteristics, and infrastructure or the current uses of adjacent property. Finally, it is not compatible with the State's Comprehensive Reuse Plan.

Accordingly, Navy will dispose of Naval Construction Battalion Center Davisville in a manner that is consistent with the State of Rhode Island and Providence Plantations' Preferred Development Plan for the property.

Dated: July 16, 1997.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).

[FR Doc. 97–19614 Filed 7–24–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement and Overseas Environmental Impact Statement for Proposed Future Operations on the Point Mugu Sea Range, Naval Air Warfare Center Weapons Division, Point Mugu, California

AGENCY: Department of the Navy, Defense.

ACTION: Notice.

SUMMARY: Purusant to Section 102(2)(c) of the National Environment Policy Act of 1969 (NEPA) as implemented by the regulations of the Council on Environmental Quality (CEQ), 40 CFR 1500–1508, and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (Navy) announces its intent to prepare a combined Environmental Impact Statement (EIS) and Overseas Environmental Impact Statement (OEIS) to evaluate the potential effects of proposed future Naval Air Warfare Center Weapons Division (NAWCWPNS) Point Mugu operations on the Point Mugu Sea Range.

The geographic scope of the EIS/OEIS includes the 36,000 square miles of Point Mugu Sea Range, an area in the Southern California Bight that covers the ocean area and controlled Special Use Airspace which parallels the California coastline from San Luis Obispo to Santa Catalina Island for 200 miles and extends seaward for more than 180 miles. The Point Mugu Sea Range has been operated by Navy for the past 50 years, and is used by the U.S. military and allied military services to test and evaluate sea, land, and air weapon systems and to provide realistic training opportunities for these forces.

In recent years, U.S. military strategy has evolved due to changing worldwide political relations, increased defense costs, and decreased budgets which have required Navy to reduce its infrastructure but retain and further develop capabilities to respond to multiple, varied threats. Consequently, the role of NAWCWPNS as a test and training center has become even more critical to the successful assessment, safe operation and improvement of current and future weapons systems.

Navy has identified three key objectives: (1) The need to increase testing by evaluating new technologies and threat scenarios; (2) the need to provide a realistic training environment to ensure that military units operate at their highest state of readiness; and (3) the need to enhance existing testing capabilities to better accommodate evolving technologies. In order to meet these objectives, Navy proposes to increase testing opportunities, increase training opportunities, and enhance the capabilities of the Point Mugu Sea Range to respond to changes in technology and military strategy. The proposed action consists of the following three elements: (1) Increased Testing Element—This element includes theater-wide and area-wide missile defense testing, a new type of activity at NAWCWPNS Point Mugu. It also includes multiple alternative air-launched target presentations, airborne laser testing, and cruise missile defense with near-shore intercepts at San Nicolas Island. (2) Increased Training Element—This element includes an increase in the current level of Fleet training exercises from two to three per year and an increase in small-scale amphibious landings at San Nicolas Island. It also includes integration of testing with Fleet training. (3) Facility Modernization Element—This element includes specific modernizations to San Nicolas Island such as installation of a new missile launcher, construction of a pier or other landing area and a vertical launch missile facility, modernization of instrumentation, and installation of new instrumentation sites. The NAWCWPNS Point Mugu modernizations include refurbishment of beach launch pads and relocation of some existing instrumentation to San Nicolas Island.

In addition to the proposed action, alternatives consisting of combinations of the above elements will be considered in the EIS/OEIS. For example, an alternative may be to maintain current levels of testing, increase training, and implement specific modernizations to San Nicolas Island. The No-Action alternative would maintain testing and training activities at current levels, with no modernization.

Environmental issues that will be addressed in the EIS/OEIS include but are not limited to air quality, noise, vegetation, wildlife, marine mammals, cultural resources, land use, water quality, public health and safety, and socioeconomics including environmental justice.

Navy will initiate a public scoping process to identify relevant environmental issues to be analyzed in this EIS/OEIS. The public scoping meetings will be held at the following times and locations: (1) August 21, 1997 at 5:30pm, Orvene Carpenter Center, 550 Park Ave., Port Hueneme, CA; (2) August 22, 1997 at 5:30pm, The Orchid Building, Orchid Room, 816 Camarillo Springs Road, Camarillo, CA; (3) August 25, 1997 at 5:30pm, Holiday Inn, 450 East Harbor Blvd., Ventura, CA; (4) August 26, 1997 at 5:30pm, Santa Barbara Museum of Natural History, Fleischmann Auditorium, 2559 Puesto del Sol Road, Santa Barbara, CA; and (5) August 27, 1997 at 5:30pm, Grant Elementary School, 2368 Pearl St., Santa Monica, CA.

The schedule for the public scoping meetings will also be available by calling toll free (888) 217–9045 or by logging onto the Point Mugu Sea Range EIS/OEIS Home Page at the following

Internet address: http:\www.nawcwpns.navy.mil/~pmeis.

Navy will set up several information stations at these scoping meetings; each information station will be staffed by a Navy representative who will be available to answer questions from meeting attendees. In addition, Navy representatives will give a brief presentation about current NAWCWPNS activities on the Point Mugu Sea Range followed by a description of the proposed action and alternatives (including the No-Action alternative). Members of the public may offer verbal or written comments at the scoping meetings, or subsequent to the meetings by mail, by facsimile, or by toll-free telephone at (888) 217–9045. Verbal comments will be limited to three minutes per individual. All comments, whether verbal or written, will receive the same attention and consideration during EIS/OEIS preparation.

Navy's official repository is located at the Oxnard Public Library, Reference Desk, 251 South ''A'' Street, Oxnard, CA 93030, (805) 385–7507.

ADDRESSESS: Navy will accept comments at the address listed below. To ensure that Navy has sufficient time to consider public input during preparation of the Draft EIS/OEIS, scoping comments should be submitted to the following address by September 13, 1997: Ms. Cora Fields, Point Mugu Sea Range EIS, c/o Code 832000E, 521 Ninth Street, Point Mugu, CA 93042–5001, telephone (805) 989–0128, FAX (805) 989–0143; or, Ms. Gina Smith, telephone (805) 989–0141, FAX (805) 989–0143. Individuals or groups with special needs, such as accessibility, foreign language translation, assistance for the blind or hearing impaired, should contact Ms. Fields or Ms. Smith at least one week before the scoping meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Ms. Fields or Ms. Smith.

Dated: July 21, 1997.

M.D. Sutton,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–19615 Filed 7–24–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

[CFDA 84.037]

Office of Postsecondary Education; Availability of the Amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1996–97 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the 1996–97 National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1996–97 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 4051, ROB–3), Washington, DC. 20202–5453, Telephone (202) 708–6726.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Gail McLarnon or Sylvia Ross, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 3045, ROB–3), Washington, DC. 20202–5453, Telephone (202) 708–8242. 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.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on January 9, 1997, (62 FR 1376) that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1996–97 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1996–97 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all published amendments and Directories.

Dated: July 16, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–19665 Filed 7–24–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Impact Statement for Siting, Construction, and Operation of the National Spallation Neutron Source

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS), pursuant to the National Environmental Policy Act

(NEPA), on the siting, construction, and operation of the proposed National Spallation Neutron Source (NSNS). The proposed NSNS facility would consist of a proton accelerator system; a spallation target; and appropriate experimental areas, laboratories, offices, and support facilities to allow ongoing and expanded programs of neutron research. The proposed site for the NSNS is the DOE-owned Oak Ridge National Laboratory in Oak Ridge, Tennessee. The alternative sites under consideration are three other DOE-owned laboratories: Argonne National Laboratory, Argonne, Illinois; Los Alamos National Laboratory, Los Alamos, New Mexico; and Brookhaven National Laboratory, Upton, New York. DOE invites the public, organizations, and agencies to present oral or written comments concerning: (1) The scope of the EIS, (2) the issues the EIS should address, and (3) the alternatives the EIS should analyze.

DATES: The public scoping period begins with publication of this NOI and continues until September 12, 1997. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed. These meetings will be held at the following times and locations:

August 11, 1997, American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830; Times: 1:30–4:30 p.m. and 6:30–9:30 p.m.

August 14, 1997, Argonne National Laboratory, Building 401—Advanced Photon Source, Room A1100, 9700 Cass Avenue, Argonne, Illinois 60439; Times: 1:30–4:30 p.m. and 6:30–9:30 p.m.

August 19, 1997, Los Alamos Area Office, Main Conference Room (Room 100), 528 35th Street, Los Alamos, New Mexico 87544; Times: 1:30–4:30 p.m. and 6:30–9:30 p.m.

September 4, 1997, Brookhaven National Laboratory, Berkner Hall (Bldg. 488), Brookhaven Avenue, Upton, New York 11973; Times: 1:30–4:30 p.m. and 6:30–9:30 p.m.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, requests for meeting special needs to enable participation at scoping meetings (e.g., interpreter for the hearing-impaired) and questions concerning the project to: David Wilfert, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, 146/FEDC, Oak Ridge, Tennessee 37831, telephone: (800) 927–9964, facsimile: (423) 576–4542, or e-mail NSNSEIS@ornl.gov.

FOR FURTHER INFORMATION CONTACT: For general information associated with the research aspects of the NSNS, please contact: Iran Thomas, Deputy Associate Director, Office of Basic Energy Research, Office of Energy Research, U.S. Department of Energy, ER–10, Germantown, MD 20874, telephone: (301) 903–3427.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Over the past 40 years, the use of neutrons for research purposes, a use pioneered in the United States, has played a valuable role in advancements in the fields of fundamental physical and biological sciences, material technology, and medicine. However, in the last two decades, the United States has fallen behind the European scientific community in the availability of state-of-the-art neutron sources and instrumentation because of the age of its existing facilities. Existing United States reactor-based neutron sources were built in the 1960s, and existing accelerator-based sources were built in the early 1980s. These facilities have had minimal upgrading and modernization, and are not well suited for the specific areas of research to which scientific investigation has evolved. In 1994, a proposal to build a new reactor-based neutron source, the Advanced Neutron Source (ANS), was not supported by Congress because of high costs (approximately $3 billion) and potential nuclear proliferation issues. Now, DOE is proposing to construct and operate the NSNS Project to provide the United States with a modern accelerator-based neutron source and neutron science research facility at a cost of approximately $1 billion to meet current and future research needs.

The proposed NSNS would produce short pulses of neutrons for use in materials research. This would be accomplished through the ''spallation'' process wherein (1) subatomic particles, called protons, are accelerated to very high energies; (2) the high energy protons are ''bunched'' into a compact group; (3) the bunched, high energy protons are directed onto a target made of a high atomic number material, in this case mercury; and (4) the collision of the protons with the target produces a pulse of neutrons from the target material. Once the spallation process is completed and the neutron pulse is produced, the neutrons would be slowed to useful energy levels, and would be guided onto samples of the materials being studied. The interactions of the neutrons and the specimens would be measured and analyzed, thus revealing information on the structure, properties, and behavior of the test material.

Purpose and Need for the NSNS

The purpose of the proposed NSNS Project is to provide the United States with its only modern, high performance pulsed neutron research facility. Since the 1970s, numerous assessments have firmly established the need for new neutron sources and instrumentation in the United States. The proposed facility would allow for advanced research in the United States in the physical and biological sciences, for industrial application, and medical research. Current facilities are inadequate to meet the existing demand for neutron research and, even if upgraded, would not be able to satisfy the growing future demand.

The need for new neutron sources has been recognized by national panels investigating the status of neutron sources and science in the United States since a National Academy of Sciences (NAS) study in 1984. After reviewing all major domestic facilities for materials research, a NAS panel recommended:

1. Construction of a steady-state, high-flux neutron source; and

2. Development of a plan leading to the construction of a major pulsed spallation neutron source.

These recommendations were reaffirmed in 1993 by DOE's Basic Energy Science Advisory Committee (BESAC) Panel on ''Neutron Sources for America's Future.'' Although a reactor-based Advanced Neutron Source (ANS) Project was proposed in each of fiscal years 1994 and 1995, the proposal was not continued in the fiscal year 1996 budget process, primarily due to the high cost (approximately $3 billion) of the total project. As a result, emphasis shifted to the lower cost proposed accelerator-based NSNS facility. According to the most recent BESAC recommendations (1996), there is an urgent need to build a short pulsed spallation source in the 1 MW power

range, dedicated to neutron scattering, with sufficient design flexibility to permit future modification for operation at higher power. The EIS will analyze the potential environmental impacts associated with the construction and operation of the facility in its fully upgraded condition (4–5 MW).

Proposed Action and Alternatives

The proposed NSNS facility would consist of a proton accelerator system, a spallation source to produce neutron pulses, and appropriate experimental areas, laboratories, offices, and support facilities to allow ongoing and expanded programs of neutron research. The NSNS Project would provide key capabilities to support multiple elements of DOE strategic planning, such as:

- Constructing leading-edge facilities for use by industries, universities, and government laboratories;
- Providing new insights into the nature of matter and energy;
- Maintaining core competencies and partnering with the private sector and other agencies; and
- Accelerating the use of emerging technologies.

DOE proposes to construct and operate the NSNS at Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee. Locating the NSNS at ORNL would offer access to existing facilities which could support the proposed NSNS facility and would take advantage of experienced staff at those facilities, including researchers with expertise in the appropriate scientific disciplines. Supporting facilities, including utilities, waste management and storage facilities, also exist at ORNL.

DOE will evaluate reasonable alternative locations, the no-action alternative, and technology alternatives. In addition to ORNL, the proposed site of the NSNS, the EIS will also analyze the potential environmental impacts associated with constructing and operation of the NSNS at three other reasonable sites: Argonne National Laboratory (ANL), Argonne, Illinois; Los Alamos National Laboratory (LANL), Los Alamos, New Mexico; and Brookhaven National Laboratory (BNL), Upton, New York. DOE identified these sites as reasonable through the application of four screening criteria to a total of thirty-nine candidate sites. The four criteria were: (1) The availability of 110 acres of land; (2) the existence of a one mile buffer zone separating the proposed NSNS from populated areas; (3) the ready availability of 50 to 60 MW of electric power; and (4) existence of the infrastructure and trained personnel associated with an ongoing neutron science program. Technology alternatives include reactor-based neutron sources and variations in the accelerator-based system. The no action alternative would be not to build or operate the NSNS.

Conceptual Design

Neutrons are one of two major particles (protons being the other) comprising the nucleus of atoms, and because they have no electric charge, they can penetrate deeply into the molecules of test materials to give scientists new insights into the structure and properties of the material. The NSNS facility would extract neutrons from the nuclei of ''target'' material so they can be subsequently used for research on various specimens.

A process known as ''spallation'' is applied to extract neutrons from target nuclei. In the spallation process, target nuclei containing large numbers of neutrons (typically heavy metals such as lead, mercury, tungsten, etc.) are struck with high energy (fast moving) particles to eject some of the contained neutrons. A large part of the NSNS facility is the accelerator system needed to produce and deliver the high energy particles (in this case protons) onto the target material. The accelerator system is comprised of:

1. An ion source to electrically charge hydrogen atoms (a hydrogen atom is comprised of a single proton in the nucleus and one orbiting electron) so they can be accelerated using magnetic fields and electromagnetic energy. This part of the facility is relatively small, i.e., only a few meters in length.
2. A Linear Accelerator (linac), which is a series of energy-inducing devices used to accelerate (increase energy level) the protons (hydrogen ions) and form a beam of high energy particles. The linac structure is approximately 550 meters (about ⅓ mile) long.
3. A storage ring to accumulate large numbers of the high energy protons, and then release that grouping of protons in a single pulse onto the target. The storage ring is a rectangular-shaped structure approximately 80 meters across.

The accelerator system is operated so that proton pulses from the storage ring are repeatedly directed onto the target at a repetition rate of 6 Hz (60 times per second). The initial design of the NSNS would involve approximately 1 MW of power (equivalent to approximately 1,340 horsepower) being deposited onto the target from this series of proton pulses. As time and technology permits, the NSNS may undergo a series of upgrades in future years to raise the beam power on the target.

The target of the proton pulse power would be liquid mercury circulated in a stainless steel vessel. Mercury, as a target material, provides good conversion of protons to released neutrons and, as a liquid, it can be continuously circulated in a closed system to absorb the impact of the proton pulses, release pulses of neutrons, and transport impact energy (heat) to remote cooling systems. Approximately 1 cubic meter of mercury would be used in the NSNS, a volume that would be expected to last for the facility's design life of 40 years.

Because the neutrons released by the spallation process are moving very fast, they must be moderated (slowed) to levels suitable for research needs. Neutron moderation is achieved by successive collisions of the fast neutrons with cooler nuclei. In the NSNS, two thermal moderators and two cryogenic moderators would be positioned around the mercury target to slow the neutrons in each pulse. First, the thermal moderators would use water to slow the neutrons to speeds associated with room temperatures (approximately 2200 meters per second). Concurrently, cryogenic moderators would use liquid hydrogen to slow the neutrons to speeds associated with very low temperatures (approximately 500 meters per second). Beam guides, 18 in all, would direct the slowed neutrons to experiment stations where the scientific research is conducted. The building housing the target, moderators, beam guides, and research instruments would be approximately 50 by 75 meters in size.

The NSNS facility would be appropriately integrated into the site infrastructure of the host laboratory, including roadways, utilities, and monitoring systems. The laboratory would provide security and fire protection. The entire facility would require approximately 110 acres of cleared land, and ready access to and availability of 50–60 MW of electric power. It would have a design lifetime of 40 years, but the design would not preclude lifetime extensions beyond 40 years. Systems and structures would be designed to facilitate eventual decontamination and removal.

Design of the NSNS is projected to span four years (FY 1999–2002), and construction nearly five years (FY 2000–2004). Facility commissioning would occur in FY 2003–2004, with FY 2005 being the first full year of operation. Project staffing is estimated to rise from approximately 30 to approximately 90 during conceptual design (FY 1996–1998); rise from approximately 100 to a peak of approximately 1200 and decline to approximately 225 during design/

construction (FY 1999–2004); and hold at approximately 225 for operation (FY 2004 and beyond). The estimated total project cost from conceptual design through commissioning is approximately $1 billion.

Preliminary Environmental Analysis

DOE plans to analyze potential impacts of the NSNS project on the following parameters. This list is neither intended to be all-inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

- Earth Resources: physiography, topography, geology, and soil characteristics.
- Land Use: plans, policies and controls.
- Water Resources: surface and groundwater hydrology, use, and quality.
- Air Quality: Meteorological basis, ambient background, pollutant sources, and potential degradation.
- Radiation Background: Cosmic, rock, soil, water, and air.
- Hazardous Materials: Handling, storage, and use; waste management both near- and long-term.
- Noise: Ambient, sources, and sensitive receptors.
- Ecological Resources: Aquatic, terrestrial, economically/recreationally important species, threatened and endangered species.
- Socioeconomics: Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources.
- Historical and Archaeological Resources: Paleontological and archaeological sites, Native American resources, historic and prehistoric sites.
- Scenic and Visual Resources.
- Wetlands: Protection and remediation.
- Health and Safety: Public and occupational impacts from routine operation and credible accident scenarios.
- Natural Disasters: Floods, tornadoes, and seismic events.
- Unavoidable Adverse Impacts.
- Natural and Depletable Resources: Requirements and conservation potential.
- Environmental Justice: Disproportionately high and adverse impacts to minority and low income populations.

The preliminary identification of reasonable alternatives and environmental issues presented in this NOI is not meant to be exhaustive or final. Alternatives other than those presented in this document may warrant examination, and new issues may be identified for evaluation.

Relevant issues related to decommissioning of the NSNS will be addressed to the extent possible. Additional NEPA review may be necessary in the future when decommissioning plans are proposed.

Scoping Meetings

The purpose of this NOI is to encourage early public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. DOE plans to hold formal public scoping meetings in the vicinity of the proposed and alternative sites to solicit both oral and written comments from interested parties.

DOE will designate a presiding officer for the scoping meetings. The scoping meetings will not be conducted as evidentiary hearings, and there will be no questioning of the commentors. However, the presiding officer may ask for clarification of statements to ensure that DOE fully understands the comments and suggestions. The presiding officer will establish the order of speakers. At the opening of each meeting, the presiding officer will announce any additional procedures necessary for the conduct of the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, a five-minute limit may be enforced for each speaker, with the exception of public officials and representatives of groups who will be allotted ten minutes each. Comment cards will also be available for those who would prefer to submit their comments in written form.

DOE will make transcripts of the scoping meetings and other environmental and project-related materials available for public review in the following reading rooms:

1. U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–3142
2. U.S. Department of Energy Reading Room, Oak Ridge Operations Office, 200 Administration Road, Room G–217, Oak Ridge, Tennessee 37831, Telephone: (423) 241–4780
3. Argonne National Laboratory, ¾ Documents Department, University Library, Third Floor Center, University of Illinois at Chicago, 801 South Morgan Street, Chicago, Illinois 60439, Telephone: (312) 996–2738
4. BNL Research Library, Bldg. 477A Brookhaven Ave., Upton, NY 11973, Telephone: (516) 344–3483
5. Longwood Public Library, 800 Middle Country Rd., Middle Island, NY 11953, Telephone: (516) 924–6400
6. Mastics-Moriches-Shirley Community Library, 301 William Floyd Parkway, Shirley, NY 11967, Telephone: (516) 399–1511
7. Los Alamos National Laboratory Public Outreach and Reading Room, Los Alamos, New Mexico 87544, Telephone: (505) 665–2127

NEPA Process

The EIS for the proposed facility will be prepared according to the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508) and DOE's NEPA Regulations (10 CFR part 1021).

The draft EIS is scheduled to be published by March 1998. A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately one month after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media when the draft EIS is distributed.

The final EIS, which will incorporate public comments received on the draft EIS, is expected in July 1998. No sooner than 30 days after a notice of availability of the final EIS is published in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**.

Signed in Washington, DC this 21st day of July, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 97–19616 Filed 7–24–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11175–002 Minnesota]

Crown Hydro Company; Notice Modifying and Establishing a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

July 21, 1997.

On April 20, 1997, the Commission issued a notice for Project No. 10455 proposing to establish a restricted

service list for the purpose of developing and executing a programmatic agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places.

On April 14, 1997, in commenting on the Commission's Draft Environmental Assessment (DEA) for the project, the City of Minneapolis and the Minneapolis Community Development Agency stated their concern that the proposed project may not be financially feasible and could pose a long-term threat to the historic resources of Minneapolis' Central Riverfront because the applicant, Crown Hydro Company (Crown Hydro), may not have the financial resources for long-term maintenance of historic project features. The April 14, 1997, comment letter identified Guy Fischer of the Minneapolis Department of Operations and Regulatory Services as the party to whom communications should be sent.

In comments on the DEA for the project filed on May 1, 1997, the Minneapolis Park and Recreation Board (Park Board) stated that it owns part of the proposed project lands, and that the land had been acquired by the Park Board for its historic significance. The Park Board is also concerned that Crown Hydro may not be able to adequately insure against potential damage to archaeological and historic features if the water is mishandled or historic features such as century-old canals and trailraces are unable to deal with the flow of water.

On May 7, 1997, Northern States Power Company (NSPC) filed a request to be added to the restricted service list established pursuant to the Commission notice of April 20, 1997. In support of the request, NSPC notes that it is a party to the proceeding and owns facilities in the immediate location of the proposed project.

On May 9, 1997, the St. Anthony Falls Heritage Board (SAFHB) filed a request to be added to the restricted service list. In support of the request, the SAFHB notes that it has particular concern about historic properties that are involved in the project; as a board established by Minnesota State Law in the 1988, the SAFHB represents interests of historic preservation, interpretation, and recreation and renewal of the St. Anthony Falls Heritage Zone, a zone designed with boundaries identical to those of the St. Anthony Falls Historic District.

On June 2, 1997, the U.S. Department of the Army, St. Paul District, Corps of Engineers (Corps) filed a request to be added to the restricted service list. In support of the request, the Corps notes that it must comply with its responsibilities under Section 106 of the National Historic Preservation Act. The proposed project would be located on approximately 0.5 acre of Corps land.

The Crown Roller Mill building, in which the proposed project powerhouse would be located, is owned by Canal Street Associates, and managed by Welsh Companies. Construction, operation, and maintenance of the proposed project would directly affect the Crown Roller Mill building.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following additions are made to the proposed restricted service list notice on April 20, 1997, for Project No. 11175:

Guy Fischer, Minneapolis Department of Operations and Regulatory Service, 250 South 4th Street, Room 300, Minneapolis, MN 55415–1316

Robert Mattson, Minneapolis Park and Recreation Board, 200 Grain Exchange, 400 South 4th Street, Minneapolis, MN 55415–1400

Mark Holmberg, Northern States Power Company, 512 Nicolet Mall, Minneapolis, MN 55402

Elizabeth Doermann, St. Anthony Falls Heritage Board, 240 Summit Avenue, St. Paul, MN 55102

John Blackstone, St. Paul District, U.S. Army Corps of Engineers, 190 Fifth Street East, St. Paul, MN 55101–1638

Larry Emond, Welsh Companies, 105 Fifth Avenue South, Minneapolis, MN 55401

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to the effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, D.C. 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19578 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–633–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

July 21, 1997.

Take notice that on July 11, 1997, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–633–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to operate existing delivery point facilities constructed under the authorization of Section 311 of the Natural Gas Policy Act of 1978 (NGPA) in Maricopa County, Arizona, for Part 284 transportation services by El Paso, under El Paso's blanket certificate issued in Docket No. CP82–435–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to operate the existing 2-inch tap, meter and appurtenant facilities to serve Pimalco Inc. for use as fuel in the manufacture of aerospace aluminum on behalf of Oasis Pipeline Company. It is stated that El Paso was fully reimbursed for the $51,451 cost of installing the tap by Pimalco. It is estimated that the peak day and annual requirements for this delivery point are 400 Mcf and 146,000 Mcf, respectively. It is asserted that the volume of gas delivered to Pimalco after the request will not exceed the volume of gas authorized prior to the request. It is further asserted that the proposal is not prohibited by El Paso's existing tariff and that El Paso has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

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. 97–19571 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3501–000]

The Empire District Electric Company; Notice of Filing

July 21, 1997.

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Electric Clearinghouse, Inc., providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Electric Clearinghouse, Inc., 13430 Northwest Freeway, Suite 1200, Houston, TX 77040.

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 August 1, 1997. 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. 97–19573 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3508–000]

The Empire District Electric Company; Notice of Filing

July 21, 1997.

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Utilicorp United providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Utilicorp United, 10700 East 350 Highway, Kansas City, MO 64138.

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 August 1, 1997. 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. 97–19574 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–645–000]

Ozark Gas Transmission System; Notice of Application

July 21, 1997.

Take notice that on July 16, 1997, Ozark Gas Transmission System (Applicant), 1,000 Louisiana, Suite 5800, Houston, Texas 77002 has filed under Section 7(c) of the Natural Gas Act (NGA), for a certificate to construct a delivery point for Arkansas Western Gas Company (AWG) in Township 9N, Range 26W in Franklin County, Arkansas. Under the terms of the Consent Decree issued in Docket No. CP78–532–000, 22 FERC ¶ 61,334 (1983) Applicant must obtain a certificate from the Commission when it installs facilities to connect with any other entity at the location where construction is proposed.

The proposed construction will allow Applicant to deliver 17,400 Dth/d to AWG. Applicant estimates the cost of this project to be $11,900. In addition, Applicant states that the construction will be financed from funds on hand.

Any person desiring to be heard or to make any protest with regard to this application should on or before August 11, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 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 the 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 this 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 Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19572 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 21, 1997.

Take notice that on July 16, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective August 15, 1997:

Fourth Revised Sheet No. 44
First Revised Sheet No. 57
Fourth Revised Sheet No. 58
Third Revised Sheet No. 63
Original Sheet No. 139.01
Second Revised Sheet No. 153
First Revised Sheet No. 154

Southern states that the purpose of this filing is to change the penalty provision of certain imbalance resolution procedures to provide that the current $15 per Dth rate will be replaced by a tiered pricing structure with rates ranging from $1 to $15 per Dth. Southern has also proposed a modification to its penalty waiver provision and has proposed to add a new provision addressing unauthorized gas volumes delivered or taken from its system.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.211 and 385.214). All such motions and protests must be filed in accordance with 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. 97–19579 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–59–001, et al.]

Southwestern Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

July 17, 1997.

Take notice that the following filings have been made with the Commission:

1. Southwestern Public Service Company

[Docket No. EL95–59–001]

Take notice that on June 24, 1997, Southwestern Public Service Company (SPS) submitted an amended compliance filing for a Wholesale Fuel Cost Clause Rider to reflect recovery from wholesale customers their portion of the Thunder Basin Coal Judgment costs.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation

[Docket No. ER97–2872–001]

Take notice that on July 11, 1997, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing an amendment to its market-based power sales tariff in compliance with the Commission's Order issued June 26, 1997 in this proceeding.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company

[Docket No. ER97–1509–000]

Take notice that on July 1, 1997, Consumers Energy Company (Consumers) tendered for filing an amendment to its prior January 31, 1997, filing involving for Non-firm Point-To-Point Transmission Service and an amendment of its Coordinated Operating Agreement with the City of Holland.

A copy of the filing was served on the Michigan Public Service Commission and the City of Holland.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER97–2661–000]

Take notice that on June 12, 1997, Puget Sound Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER97–3101–000]

Take notice that on July 11, 1997, Dayton Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Indiana Gas & Electric Company

[Docket No. ER97–3167–000]

Take notice that on June 25, 1997, Southern Indiana Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER97–3430–000]

Take notice that on June 25, 1997, UtiliCorp United Inc. (UtiliCorp) filed a service agreement with NESI Power Marketing, Inc., for service under its non-firm point-to-point open access service tariff for its operating division, Missouri Public Service.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER97–3431–000]

Take notice that on June 25, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Entergy Power Marketing Corporation for service under its non-firm point-to-point open access service tariff for its operating division, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER97–3432–000]

Take notice that on June 25, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Arkansas Electric Cooperative Corporation for service under its non-firm point-to-point open access service tariff for its operating division, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER97–3433–000]

Take notice that on June 25, 1997, UtiliCorp United Inc. (UtiliCorp) filed service agreements with CMS Marketing, Services and Trading for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Colorado.

Comment date: July 30, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. The Empire District Electric Company

[Docket No. ER97–3502–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Coral Power, L.L.C. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Coral Power, L.L.C., 909 Fannin Suite 700, Houston, TX 77010.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. The Empire District Electric Company

[Docket No. ER97–3503–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Aquilla Power Marketing providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Aquilla Power Marketing, 2533 North 117th Ave, Omaha, NE 68164.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. The Empire District Electric Company

[Docket No. ER97–3504–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Vitol Gas & Electric, L.L.C. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Vitol Gas & Electric, L.L.C., 470 Atlantic Avenue, 10th Floor, Boston, MA 02210–2206.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. The Empire District Electric Company

[Docket No. ER97–3505–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and LG&E Power Marketing, Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon LG&E Power Marketing, Inc., 220 West Main Street, Louisville, KY 40202.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The Empire District Electric Company

[Docket No. ER97–3506–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and InterCoast Power Marketing providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon InterCoast Power Marketing, 666 Grand Ave, P.O. Box 657, Des Moines, IA 50303–0657.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. The Empire District Electric Company

[Docket No. ER97–3507–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Illinois Power providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Illinois Power, 2701 N. Martin Luther King, Jr. Drive, Decatur, IL 62526.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. The Empire District Electric Company

[Docket No. ER97–3509–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Central Louisiana Electric Company, Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Central Louisiana Electric Company, Inc., 2005 Vandevelde Ave, Alexandria, LA 71303.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Empire District Electric Company

[Docket No. ER97–3511–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Valero providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Valero, Two Allen Center, 1200 Smith Street, Houston, TX 77002.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Empire District Electric Company

[Docket No. ER97–3512–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Union Electric Co. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Union Electric Co., 1901 Chouteau Ave, P.O. Box 149, St. Louis, MO 63166.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Empire District Electric Company

[Docket No. ER97–3513–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and NORAM providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon NORAM, 1600 Smith Street, 12th Floor, P.O. Box 4455, Houston, TX 77210–4405.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Empire District Electric Company

[Docket No. ER97–3514–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Morgan Stanley Capital Group, Inc., providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Morgan Stanley Capital Group, Inc., Commodities Department, Fourth Floor, 1585 Broadway, New York, NY 10036.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. The Empire District Electric Company

[Docket No. ER97–3515–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Sonat Power Marketing, L.P., providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Sonat Power Marketing, L.P., P.O. Box 2563, Birmingham, AL 35202–2563.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. The Empire District Electric Company

[Docket No. ER97–3516–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Minnesota Power providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Minnesota Power, 30 West Superior Street, Duluth, MN 55802.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. The Empire District Electric Company

[Docket No. ER97–3517–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Public Service Company of Oklahoma and Southwestern Electric Power Company (Central Southwest Services, Inc.) providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Central Southwest Services, Inc., 2 West 2nd Street, Tulsa, OK 74103.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. The Empire District Electric Company

[Docket No. ER97–3518–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and PECO Energy Company—Power Team providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon PECO Energy Company—Power Team, 2004 Renaissance Boulevard, King of Prussia, PA 19406.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. The Empire District Electric Company

[Docket No. ER97–3519–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and NP Energy Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon NP Energy Inc., 3650 National City Tower, 101 South Fifth Street, Louisville, KY 40202.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. The Empire District Electric Company

[Docket No. ER97–3520–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and ERI Services providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon ERI Services, Park West Two, Suite 600, 2000 Cliff Mine Road, Pittsburgh, PA 15275.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. The Empire District Electric Company

[Docket No. ER97–3521–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Cinergy Services, Inc. providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Cinergy Services, Inc., 139 East Fourth Street, Cincinnati, OH 45202.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. The Empire District Electric Company

[Docket No. ER97–3522–000]

Take notice that on June 23, 1997, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and Entergy Services providing non-firm point-to-point transmission service pursuant to the open access transmission tariff (Schedule OATS) of EDE.

EDE states that a copy of this filing has been served by mail upon Entergy Services, P.O. Box 8082, Little Rock, AR 72203.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Boston Edison Company

[Docket No. ER97–3523–000]

Take notice that on June 25, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for Edison Source (Edison Source). Boston Edison requests that the Service Agreement become effective as of June 1, 1997.

Edison states that it has served a copy of this filing on Edison Source and the Massachusetts Department of Public Utilities.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. American Hunter Energy, Inc.

[Docket No. ER97–3524–000]

Take notice that on June 26, 1997 American Hunter Energy Inc.(AHE), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that AHE had completed all the steps for pool membership. AHE requests that the Commission amend the WSPP Agreement to include it as a member.

AHE requests an effective date of June 18, 1997, for the proposed amendment. Accordingly, AHE requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. GPU Advanced Resources, Inc.

[Docket No. ER97–3666–000]

Take notice that on July 9, 1997, GPU Advanced Resources, Inc. (Advanced Resources) tendered for filing pursuant to Rule 204 and Rule 205.(18 CFR 385.204, and 18 CFR 385.205) an application for waivers and blanket approvals under certain Commission regulations and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

Advanced Resources intends to engage in marketing and sales of electric energy and capacity at market-based rates. As described in the application, Advanced Resources is an affiliate of GPU, Inc., a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company.

Comment date: July 31, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Kalaeloa Partners, L.P.

[Docket No. QF89–198–002]

On July 8, 1997, Kalaeloa Partners, L.P. (Applicant), of 91–111 Kalaeloa Boulevard, Kapolei, Hawaii 96707 submitted for filing an application for recertification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located on the island of Oahu, Ewa Beach, Hawaii. The Commission subsequently certified and then recertified the facility as a 192.2 MW qualifying cogeneration facility, Kalaeloa Partners, L.P., 48 FERC ¶ 61,173 (1989), and Kalaeloa Partners, L.P., 59 FERC ¶ 62,111 (1992), respectively. Power from the facility is sold to Hawaiian Electric Company, Inc. The instant request for recertification is due to changes in the ownership of the facility.

Comment date: 15 days after the date of publication of this notice in the **Federal Register**, 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. 97–19620 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3546–000, et al.]

The United Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

July 21, 1997.

Take notice that the following filings have been made with the Commission:

1. The United Illuminating Company

[Docket No. ER97–3546–000]

Take notice that on June 30, 1997, The United Illuminating Company (UI), tendered for filing a Service Agreement, dated June 1, 1997, between UI and the New England Power Pool (NEPOOL) on behalf of the NEPOOL Participants for non-firm point-to-point transmission service under UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

UI requests an effective date of June 1, 1997, for the Service Agreement. Copies of the filing were served upon NEPOOL and upon the Connecticut Department of Public Utility Control.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. The Montana Power Company

[Docket No. ER97–3547–000]

Take notice that on July 1, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Firm Point-To-Point Transmission Service Agreement with Idaho Power Company (Idaho Power) under FERC Electric Tariff, Original Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Idaho Power.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Indiana Gas and Electric Company

[Docket No. ER97–3548–000]

Take notice that on July 1, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing two (2) service agreements for market based rate power sales under its Market Based Rate Tariff with the following entities:

1. PacifiCorp Power Marketing, Inc.
2. Indiana Municipal Power Agency

Copies of the filing were served upon each of the parties to the service agreements.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER97–3549–000]

Take notice that on June 30, 1997, Southern California Edison Company (Edison), tendered for filing the following Supplemental Agreement (Supplemental Agreement) to the 1990 Integrated Operations Agreement (1990 IOA) with the City of Anaheim (Anaheim), FERC Rate Schedule No. 246, and associated Firm Transmission Service Agreement (FTS Agreement):

Supplemental Agreement Between Southern California Edison Company and City of Anaheim for the Integration of the 1997 SDG&E Power Sale Agreement

Edison-Anaheim 1997 SDG&E Firm Transmission Service Agreement Between Southern California Edison Company and the City of Anaheim

The Supplemental Agreement sets forth the terms and conditions by which

Edison will integrate capacity and associated energy under Anaheim's Power Sale Agreement (PSA) with San Diego Gas & Electric Company (SDG&E). The FTS Agreement sets forth the terms and conditions by which Edison, among other things, will provide firm transmission service for the PSA. Edison seeks waiver of the 60 day prior notice requirement and requests that the Commission assign an effective date of July 1, 1997, to the Supplemental and FTS Agreements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

4a. Northern States Power Company (Minnesota Company)

[Docket No. ER97–3550–000]

Take notice that on June 30, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing the Firm Point-to-Point Transmission Service Agreement between NSP and City of Medford, Wisconsin.

NSP requests that the Commission accept the agreement effective June 1, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER97–3551–000]

Take notice that on July 1, 1997, Illinois Power Company (IP), tendered for filing a Service Agreement and Network Operating Agreement under which it will provide Network Integration Service to Cornbelt Electric Cooperative, Inc. Service will be provided in accordance to IP's Open Access Transmission Tariff on file with the Commission. IP and Cornbelt are requesting an effective date as of June 1, 1997.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER97–3552–000]

Take notice that on July 1, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and The City of Williamstown, Kentucky.

Cinergy and The City of Williamstown are requesting an effective date of June 30, 1997.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Rochester Gas and Electric Corporation

[Docket No. ER97–3553–000]

Take notice that on July 1, 1997, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for order accepting rate schedule for power sales at market-based rates. RG&E requests waiver of the 60-day filing requirements and requests that its FERC Electric Rate Schedule No. 2 be accepted as of July 2, 1997.

A copy of this filing has been served on the New York State Public Service Commission.

Comment date: August 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma Southwestern Electric Power Co.

[Docket No. ER97–3554–000]

Take notice that on June 27, 1997, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing a revised ERCOT Regional Transmission Service Agreement between CPL and WTU and the Public Utilities Board of Brownsville, Texas (PUB) under the CSW Operating Companies' open access transmission service tariff.

Comment date: August 4, 1997, 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. 97–19621 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–067]

California Department of Water Resources; Notice of Availability of Draft Environmental Assessment

July 21, 1997.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for California Department of Water Resources' (licensee) application to expand the Feather River Fish Hatchery.

In summary, the DEA examines the environmental impacts of three alternatives for expanding the hatchery: (1) Licensee's proposed action: 600 feet of new raceways with hatching and incubation facilities; (2) proposed alternative: 1,600 feet of raceways; and (3) no-action. These alternatives are described in detail on pages two and three of the DEA.

The DEA recommends the licensee construct 600 feet of new raceways at the Feather River Fish Hatchery in accordance with the licensee's proposed action alternative. The DEA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of the licensee's recommendation for expansion of the Feather River Fish Hatchery. No final conclusions have been made by the Commission regarding this matter.

Should you wish to provide comments on the DEA, they should be filed within 30 days from the date of this letter. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project number (2100–067) on any comments filed.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19575 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3065–007]

Electro Ecology, Inc.; Notice of Availability of Environmental Assessment

July 21, 1997.

An environmental assessment (EA) is available for public review. The EA is for an application to amend the Wappingers Falls Hydroelectric Project. The application is to install a new 25 kW turbine on a new 20-inch-diameter minimum flow release pipe. The new pipe will be used to release the project's minimum flow to the bypass reach. The new release pipe will replace an existing, smaller-diameter pipe which does not have a turbine attached to it. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Wappingers Falls Hydroelectric Project is located on Wappinger Creek in Dutchess County, New York.

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, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager, Pete Yarrington, at (202) 219–2939.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19576 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4678–019, 4679–022]

Power Authority of the State of New York; Notice of Availability of Draft Environmental Assessment

July 21, 1997.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared for New York Power Authority's (licensee) application to operate the Crescent and Vischer Ferry Hydroelectric Projects in a run-of-river mode.

In summary, the DEA examines the environmental impacts of four alternatives for operating the Crescent and Vischer Ferry Projects: (1) Licensee's proposed action: run-of-river operation; (2) licensee's initial proposed action: limited ponding; (3) the New York Department of Environmental Conservation's proposed action: run-of-river with reservoir drawdown; and (4) no-action. These alternatives are described in detail on pages six and seven of the DEA.

The DEA recommends that the licensee operate the projects in a run-of-river mode in accordance with the licensee's proposed action alternative. The DEA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of the licensee's recommendation for operation of the Crescent and Vischer Ferry Projects. No final conclusions have been made by the Commission regarding this matter.

Should you wish to provide comments on the DEA, they should be filed within 30 days from the date of this letter. Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please include the project numbers (4678–019 and 4679–022) on any comments filed.

Lois D. Cashell,

Secretary.

[FR Doc. 97–19577 Filed 7–24–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400115; FRL–5733–3]

Request for Nominations to the Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: EPA is inviting nominations of candidates to consider for appointment to fill vacancies on the Toxics Data Reporting (TDR) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). Nominations will be accepted until 5 p.m. EST, August 18, 1997.

ADDRESSES: Submit nominations to: Cassandra Vail, Designated Federal Official, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michelle Price at 202–260–3372, e-mail: price.michelle@epamail.epa.gov for specific information regarding the TDR Committee and the stakeholder dialogue.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. Law 92–463. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TDR is a committee created under the auspices of NACEPT.

On April 22, 1997, EPA finalized a rule under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313 adding seven new industry sectors to the Toxics Release Inventory program. These newly added industry groups include: metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk terminals and plants-wholesale, and solvent recovery services. These are all industry sectors which will provide significant information on TRI chemicals and which are engaged in activities directly related to the support of manufacturing activities currently covered under TRI. Certain facilities within these industry groups will begin to report to TRI for activities conducted during the 1998 calendar year with reports submitted by July 1, 1999.

In finalizing the industry expansion rule, the Vice President announced that EPA would initiate an intensive stakeholder process to comprehensively evaluate the current reporting forms and reporting practices relating to the TRI program. The goals of this process will be to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. EPA plans to use the TDR Committee under NACEPT as one avenue to gain input from stakeholders on this issue. Below are some possible topics for discussion in the TDR Committee:

- Format of the Form R.
- Nomenclature used in the Form R.
- Opportunities for burden reduction in both the Form R and Form A.
- Additional clarification of the elements in the Form R.
- EPA's presentation of the data in public information documents.

EPA expects to receive specific recommendations from NACEPT for

changes, modifications, deletions, and/or additions of data elements to the Form R and the Form A. The recommendations will include information on how the changes or modifications will improve the type of right-to-know information available to communities or streamline the paperwork burden for businesses. In making recommendations to EPA, NACEPT will also identify a priority level for those recommendations.

EPA will review the recommendations received from NACEPT and use them to make decisions about changes to the Form R and Form A. Changes to the Forms will be made as expeditiously as possible depending on whether these changes can be made administratively versus through notice and comment rulemaking.

EPA is seeking nominations for representation from all sectors, including state and local agencies, industry, environmental groups, public health groups, unions, small business, and community organizations.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number. EPA plans to have the first meeting of this committee in September or October of this year and a total of approximately six or seven meetings over the course of the next year. Prospective nominees should consider the fact that serving on this committee is a serious time commitment. In addition, please consider that a Council Chair may consider the removal of a Council member if the member has missed two consecutive meetings of the Council.

Dated: July 22, 1997.

Christine M. Augustyniak,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–19666 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5482–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed July 14, 1997 Through July 18, 1997

Pursuant to 40 CFR 1506.9.

EIS No. 970270, FINAL EIS, DOE, ID, NV,WA, MT, OR, WY, Watershed Management Program Standards and Guidelines, Implementation, ID, NV, MT, OR, WA and WY, Due: August 25, 1997, Contact: Eric N. Powers (503) 230–5823.

EIS No. 970271, DRAFT EIS, FHW, CA, CA–37 Highway Improvement, Napa River Bridge to the existing Freeway Section of CA–37 that begins near Diablo Street, Funding and US Army COE Section 404 Permit Issuance, Vallejo, Solano County, CA, Due: September 15, 1997, Contact: John Schultz (916) 498–5041.

EIS No. 970272, DRAFT EIS, STB, LA, Kansas City Southern Railway (KCS) Construction and Operation to Connect the Geismar Industrial Area to KCS' Mainline near Sorrento, Construction Exemption Approval, Ascension Parish, LA, Due: September 08, 1997, Contact: Michael Dalton (202) 565–1530.

EIS No. 970273, FINAL EIS, FTA, AL, Canal Streetcar Line Reintroduction, Canal Street from the Mississippi River to the Cemeteries, with a Spur Line to City Park, Funding, City of New Orleans, Orleans Parish, LA, Due: August 25, 1997, Contact: Peggy Crist (817) 860–9663.

EIS No. 970274, LEGISLATIVE FINAL, AFS, WA, LEGISLATIVE EIS—Upper White Salmon River Wild and Scenic River Study, Possible Designation, National Wild and Scenic River System, Gifford Pinchot National Forest, Yakima Indian Nation, Klickitat County, WA, Due: August 25, 1997, Contact: Steve Mellor (541) 386–23333.

EIS No. 970275, FINAL SUPPLEMENT, COE, NJ, DE, PA, Delaware River Comprehensive Navigation Channel Improvement, Additional Information, Beckett Street Terminal in New Jersey through Philadelphia Harbor, Implementation, NJ, DE and PA, Due: August 30, 1997, Contact: John Brady (215) 656–6555.

EIS No. 970276, DRAFT EIS, FAA, NM, Southwest Regional Spaceport (SRS) Development and Operation Project, Commercial Space Vehicles Launching Facility, Licensing, Sierra and Dona Ana Counties, NM, Due: September 08, 1997, Contact: Nikos Himaras (202) 366–2455.

EIS No. 970277, FINAL EIS, USN, CA, Fleet and Industrial Supply Center Vision 2000 Maritime Development, Disposal and Reuse, Funding, NPDES Permit, COE Section 10 and 404 Permits, City of Oakland, Alameda County, CA Due: August 25, 1997, Contact: Gary J. Munelawa (415) 244–3022.

EISNo. 970278, FINAL EIS, FHW, CA, ADOPTION-Fleet and Industrial Supply Center Vision 2000 Maritime Development, Funding Approval for the First Phase of the Port's Joint Intermodal Terminal, Port of Oakland, City of Oakland, Alameda County, CA, Contact: Dan Harris (415) 744–2611. The U.S. Department of Transportation, Federal Highway Administration (FHWA) has ADOPTED the U.S. Navy's FEIS #970277, filed 7–18–97. The FHWA was a COOPERATING AGENCY on the above project. Recirculation of the FEIS is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 970279, DRAFT EIS, DOE, NY, Disposal of the Defueled S3G and D1G Prototype Reactor Plants, Implementation, Located at the Knolls Atomic Power Laboratory Kesselring Site near West Milton, Saratoga County, NY, Due: September 08, 1997, Contact: Andrew S. Baitinger (518) 884–1234.

EIS No. 970280, FINAL EIS, FRC, MA, NH, VT, ME, Portland Natural Gas Transmission System Project (PNGTS) and (PNGTS)/Maritimes & Northeast Pipeline L.L.C., Phase II Joint Facilities Project, Construction and Operation, COE Section 10 and 404 Permits, MA, York and Cumberland Counties, ME, Coos County, NH and Essex County, VT, Due: August 25, 1997, Contact: Paul McKee (202) 208–1088.

EIS No. 970281, DRAFT SUPPLEMENT, DOE, CA, Petroleum Production at Maximum Efficient Rate, Update Information for the Sale of Naval Petroleum Reserve No. 1 (NPR–1 also called ''Elk Hills'') Amendment of Kern County General Plan, Elk Hills, Kern County, CA, Due: September 08, 1997, Contact: Anthony Como (202) 586–5935.

Amended Notices

EIS No. 970097, DRAFT EIS, AFS, WY, CO, Tie Camp Timber Sale, Harvesting Timber and Road Construction, Medicine Bow-Routt National Forest, Brush Creek/Hayden Ranger District, Carbon County, WY and Jackson County, CO, Due: August 15, 1997, Contact: Andy Cadenhead (307) 326–5258. Published FR 03–28–97-Review Period extended.

Dated: July 22, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–19658 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5482–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 30, 1997 through July 04, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D–BLM–K67043–AZ Rating E02, Cyprus Miami Mining Leach Facility Expansion Project, Construction and Operation, Plan of Operations Approval and COE Section 404 Permit, Gila County, AZ.

Summary: EPA expressed environmental objections since the proposed alternative does not appear to be the least environmentally damaging practicable alternative in accordance with guidelines pursuant to Clean Water Act, Section 404. EPA believed additional financial assurance is needed for the contingency of collecting and managing mine leachate. A Clean Air Act conformity analysis is needed as the proposed facility would generate an increase of over 100 tons per year of pollutants.

Final EISs

ERP No. F–AFS–L39041–OR Metolius Wild and Scenic River Management Plan, Implementation, Deschutes National Forest, Sisters Range District, Jefferson County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–E90015–00, Pearl River in the Vicinity of Walkiah Bluff, Wetland Restoration, Implementation, Picayune, Pearl River County, MS and St. Tammany Parish, LA.

Summary: EPA expressed environmental concerns over the ability of the project to maintain the proposed redirected flow regime on a long-term basis, and suggested that the Corps develop a monitoring program to review the project's status over a five-year period.

ERP No. F–SFW–L99005–WA, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: July 22, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–19659 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–744; FRL–5726–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–744, must be received on or before August 25, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources andServices Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mary Waller (PM 21)	Rm. 265, CM #2, 703–308–9354, e-mail:waller.mary@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail:giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–744

(including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 11, 1997.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer

PP 3E2938

EPA has received a pesticide petition (PP) 3E2938 from Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013 proposing to amend 40 CFR 180.410 by establishing tolerances for residues of the fungicide triadimefon, 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone, and its metabolites containing chlorophenoxy and triazole moieties expressed as the fungicide in or on the raw agricultural commodities coffee beans at 0.1 ppm. The nature of the residue in plants and livestock is adequately understood. The analytical method for determining residues uses gas-liquid chromatography coupled with a thermionic detector.

A. Residue Chemistry

1. *Plant and livestock metabolism.* The nature of the residue in plants and animals is adequately understood. The residue of concern is triadimefon and its triazole and chlorophenoxy metabolites. Since there are no livestock feedstuffs derived from coffee, the nature of the residue in poultry and ruminants is not of concern here.

2. *Analytical method.* Adequate analytical methods are available for analysis of triadimefon and its triazole and chlorophenoxy metabolites in or on coffee. These methods are available in PAM II as Method I.

3. *Magnitude of residue.* Fifteen separate residue trials have been conducted and submitted to the EPA with triadimefon on coffee. These trials were conducted in Brazil (4 trials), Mexico (4 trials), Costa Rica (2 trials), El Salvador (2 trials), Guatemala (1 trial) and Columbia (2 trials). The EPA has determined that these data show that residues of triadimefon and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in the raw agricultural commodity coffee beans will not exceed the proposed tolerance of 0.1 ppm. Although no data on roasted beans or instant coffee were submitted, the EPA has concluded that food additive tolerances are not required. There are no livestock feed stuffs from coffee and therefore, secondary residues in meat, milk, poultry and eggs are not expected. Since this is an import tolerance petition and since coffee is not normally rotated, the nature of residue in rotational crops is not of concern.

B. Toxicological Profile

1. *Acute toxicity. Rat acute oral study with an* LD_{50} of 568 + 61 mg/kg (male) and 363 + 41 mg/kg (female). Rabbit acute dermal study with a LD_{50} of >2000 mg/kg. Rat acute inhalation study with a LC_{50} of > 3.570 mg/l. Primary eye irritation study in the rabbit which showed practically no irritation. Primary dermal irritation study which showed practically no irritation. Primary dermal sensitization study which indicated that triadimefon is a skin sensitizer.

2. *Genotoxicity.* Triadimefon has been found to be negative in the Ames reverse mutation test and in the Structural Chromosome Aberration Test

3. *Reproductive and developmental toxicity.* A rat developmental toxicity study showed a maternal systemic NOEL of 30 mg/kg/day and the LOEL 90 mg/kg/day. The NOEL for developmental toxicity was 30 mg/kg/day and the LOEL was 90 mg/kg/day. In the developmental toxicity study in rabbits, the maternal systemic NOEL was 50 mg/kg/day and the LOEL 120 mg/kg/day. The NOEL for developmental toxicity was 20 mg/kg/day and the LOEL was 50 mg/kg/day. Effects seen at the developmental LEL in the rabbit study were irregular spinous process and ossification of various bones. A 3-generation rat reproduction study showed decreases in maternal body weight gain, fertility, and in litter size, pups survival during the lactation phase, and pups weights. The maternal NOEL was 300 ppm and the reproductive NOEL was 50 ppm. A 2-generation rat reproductive study showed reductions in litter size, pups viability, birth and lactational weights. The reproductive NOEL was 50 ppm.

4. *Subchronic toxicity.* A 3-month feeding study in the rat with a NOEL of 2,000 ppm based on decreased body weight gain and food consumption attributed to palatability. A rat 30-day feeding study with a NOEL of 10 mg/kg. A thirteen-week dog-feeding study with a NOEL of 2,400 ppm based on decreased body weight gain and food consumption due to palatability. There was also a decreased hematocrit, RBC count, hemoglobin volume and microsomal induction. A 28-day rabbit dermal study with a NOEL >250 mg/kg. A rat 21-day inhalation study with a NOEL = 78.7 mg/$m^{3/6}$ hrs. per day/ 15 exposures.

5. *Chronic toxicity.* A 2-year rat chronic feeding study defined a NOEL for systemic effect as 300 ppm (males = 16.4 mg/kg/day; females = 22.5 mg/kg/day). The systemic LOEL was 1,800 ppm (males = 114.0 mg/kg/day; females = 199.0 mg/kg/day) based on neoplastic and systemic effects. A dog feeding study showed only minimal toxic effects (decrease in body weight, increase in liver weight and in hepatic *N*-demethylase activity, and an increase in serum alkaline phosphatase activity. The NOEL was established at 100 ppm. A mouse oncogenicity study showed hepatocellular adenomas in both sexes of NMRI mice. The NOEL was established for males at 50 ppm. No NOEL was reached for females. A mouse oncogenicity study using CF1–W74 mice was negative for oncogenicity.

6. *Animal metabolism.* In a general rat metabolism study triadimefon was initially converted to triadimefon. This conversion was more rapid in males.

The major metabolites were the acid and alcohol of triadimefon. In males radioactivity was found mainly in feces, whereas, in females, radioactivity was equally distributed between urine and feces. No radioactivity was recovered in the expired air. Peak tissue levels were found in 2 to 4 hours and were highest in fat, liver and kidney.

7. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of triadimefon have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects, but no such effects were noted in any of the studies with either triadimefon or its metabolites.

8. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published in the **Federal Register** of September 24, 1986 (51 FR 33992), EPA has classified triadimefon as Group ''C'' for carcinogenicity (possible human carcinogen) based on the results of carcinogenicity studies in 2 species. The classification as Group C was based on borderline statistically significant increases in thyroid adenomas in male rats, and increases in liver adenomas in both sexes of mice. Because the tumors were benign, and there were no apparent genotoxicity concerns, the Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk.

C. Aggregate Exposure

1. *Dietary (food) exposure*—a. *Chronic*. For purposes of assessing the potential dietary exposure from food under the proposed tolerances, Bayer has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC) derived from the previously established tolerances for triadimefon as well as the proposed tolerance for triadimefon on coffee beans at 0.1 ppm. The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data which estimate the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, very conservative assumptions--100% of all commodities will contain triadimefon residues, and those residues would be at the level of the tolerance--which result in a large overestimate of human exposure. Thus, in making a safety determination for these tolerances, Bayer took into account this very conservative exposure assessment.

b. *Acute.* EPA has not estimated non-occupational exposures other than dietary for triadimefon. Acceptable, reliable data are not currently available with which to assess acute risk. Triadimefon is registered for outdoor residential use (lawn use). While dietary and residential scenarios could possibly occur in a single day, triadimefon would rarely be present on both the food eaten and the lawn on that single day. Even assuming this were the case, it is yet more unlikely that residues would be present at tolerance level on all food eaten that day for which triadimefon tolerances exist, as is assumed in the acute dietary risk analysis, and on the lawn that same day. Because the acute dietary exposure estimate assumes tolerance level residues and 100% crop treated for all crops evaluated, it is a large over-estimate of exposure and is considered to be protective of any acute exposure scenario.

2. *Drinking water exposure.* Based on the available studies used in EPA's assessment of environmental risk, triadimefon and its metabolites are mobile and persistent and have the potential to leach into groundwater. There is no established Maximum Concentration Level for residues of triadimefon in drinking water. No drinking water health advisory levels have been issued for triadimefon or its metabolite triadimenol. The ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992) indicated that triadimefon was monitored for in 14 wells in California from 1984 to 1989. There were no detectable residues (limit of detection was not stated). Although the Agency does not have available data to perform a quantitative drinking water risk assessment for triadimefon at this time, Bayer is currently conducting 2 prospective groundwater monitoring studies. Previous experience with more persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and the Agency's best scientific judgement, EPA concludes that it is not likely that the potential exposure from residues of triadimefon in drinking water added to the current dietary exposure will result in an exposure which exceeds the RfD.

3. *Non-occupational exposure.* Triadimefon is currently registered for use on turf and ornamentals. Bayer has conducted and submitted to the EPA an exposure study designed to measure the upper bound acute exposure potential of adults and children from contact with triadimefon treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. The estimated safe residue levels for triadimefon on treated turf for 10-year-old children ranged from 1.3 – 6.4 µg/cm^2 and for 5-year-old children from 1.1 – 5.6 µg/cm^2. This compares with the average triadimefon transferable residue level of 1.0 µg/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact triadimefon-treated turf as soon after application as the spray has dried.

D. Cumulative Effects

At this time, the Agency has not made a determination that triadimefon and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance, only the potential risks of triadimefon in its aggregate exposure are being considered.

E. Safety Determination

1. *U.S. population.*—a. *Chronic risk.* Based on the available chronic toxicity data, EPA has established the RfD for triadimefon at 0.04 milligrams(mg)/kilogram(kg)/day. This RfD is based on a 2-year dog feeding study with a NOEL of 11.4 mg/kg/day and an uncertainty factor of 300. An uncertainty factor of 300 was applied to account for inter-species extrapolation (10), intra-species variability (10), and the lack of an adequate reproduction study (3). Decreased food intake, depression in weight gain, and significantly ($p < 0.05$) increased alkaline phosphatase activity in both sexes were the effects observed at the lowest effect level (LEL). Using the conservative exposure assumptions described above, Bayer has determined that aggregate dietary exposure to triadimefon from the previously established and the proposed tolerance on coffee will utilize 12.32% of the RfD for the U.S. population (48 states). There is generally no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Acceptable, reliable data are not available to quantitatively assess risk from drinking water or from

residential uses. However, there is a reasonable certainty that no harm will result from aggregate exposure to triadimefon residues.

b. *Acute risk.* The EPA has recommended that the developmental NOEL from the rabbit developmental toxicity study (20 mg/kg/day) be used for acute dietary risk calculations. Based on the NFCS 1989–92 data base, the population of concern for this risk assessment is children 1–6 years old. The calculated Margin Of Exposure (MOE) value is 531. This MOE does not exceed the Agency's level of concern for acute dietary exposure.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of triadimefon, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat should be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2-generations, as well as any observed systemic toxicity. A rat and rabbit developmental toxicity studies and a 2-generation and 3-generation rat reproduction studies have been conducted with triadimefon as described above under Toxicology Profile. Maternal and developmental toxicity NOELs of 30 mg/kg/day were determined in the rat developmental toxicity studies. In the rabbit developmental toxicity study, the maternal NOEL was 50 mg/kg bwt/day and the developmental NOEL was 20 mg/kg bwt/day. Although EPA has accepted the rat and rabbit developmental toxicity studies, they have determined that the rat reproduction studies are not acceptable and question whether another study would adequately answer the question about the potential reproductive toxicity of triadimefon. The EPA believes that the additional information my be collected from the 90-day neurotoxicity study which was submitted to the EPA on October 30, 1996.

a. *Chronic risk.* FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Therefore, EPA has incorporated an additional 3-fold uncertainty factor into the calculation of the RfD because of the absence of an acceptable reproduction study. The Agency notes that there is approximately a 2-fold difference between the developmental NOEL of 20 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 11.4 mg/kg/day from the 2-year dog feeding study which was the basis of the RfD. It is further noted that in the rabbit developmental toxicity study, the developmental NOEL of 20 mg/kg/day is lower than the maternal systemic NOEL of 50 mg/kg/day, suggesting the possibility of increased sensitivity for the pre-natal child. The TMRC value for the most highly exposed infant and children subgroup (non-nursing infants <1 year old) occupies 35.1% of the RfD. However, this calculation also assumes 100% crop treated and uses tolerance level residues for all commodities. Refinement of the dietary risk assessment by using percent of crop treated and anticipated residue data would likely greatly reduce the dietary exposure estimate and result in an anticipated residue contribution (ARC) which would occupy a percent of the RfD that is substantially lower than the currently calculated TMRC value. Should an additional uncertainty factor be deemed appropriate, when considered in conjunction with a refined exposure estimate, it is unlikely that the dietary risk will exceed 100 percent of the RfD. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to triadimefon residues.

b. *Acute risk.* The EPA has recommended that the developmental NOEL from the rabbit developmental toxicity study (20 mg/kg/day) be used for acute dietary risk calculations. Based on the NFCS 1989–92 data base, the population of concern for this risk assessment is children 1-6 years old. The calculated Margin Of Exposure (MOE) value is 531. This MOE does not exceed the Agency's level of concern for acute dietary exposure.

F. International Issues

A Codex Maximum Residue Level (MRL) of 0.1 ppm has been established for residues of triadimefon and triadimenol.

G. Mode of Action

Triadimefon is a sterol demethylation inhibitor (DMI) fungicide. It is systemic and shows activity against rust infecting coffee. Triadimefon provides protective activity by preventing completion of the infection process by direct inhibition of sterol synthesis. It is rapidly absorbed by plants and translocated systemically in the young growing tissues. (PM 22)

2. E.I. duPont de Nemours & Co. (DuPont)

PP 7F4805

EPA has received a pesticide petition (PP) 7F4805 from E.I. duPont de Nemours & Co. (DuPont), P.O. Box 80038, Wilmington, DE 19880–0038 proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. Section 346a, to amend 40 CFR 180.474 by establishing tolerances for residues of the fungicide cymoxanil: 2-cyano-*N*-[(ethylamino)carbonyl]-2-(methoxyimino)acetamide in or on the raw agricultural commodity potatoes at 0.1 ppm. The proposed analytical method for determining residues is high performance liquid chromatography.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cymoxanil in plants is adequately understood for the purposes of this tolerance. Cymoxanil degrades rapidly and extensively in potatoes to natural products. The primary metabolite is glycine (a natural amino acid), which is reincorporated into other naturally occurring products.

2. *Animal metabolism.* The metabolism of cymoxanil in animals is adequately understood. Cymoxanil degrades rapidly and extensively in ruminants to natural products, including fatty acids, glycerol, glycine and other amino acids, lactose, and acid hydrolyzable formyl and acetyl groups.

3. *Analytical method.* The proposed practical analytical method utilizes high performance liquid chromatography for detecting and measuring levels of cymoxanil in or on potatoes with a general limit of quantitation of 0.05 ppm. This method allows monitoring of food with residues at or above the levels proposed in this tolerance. This method has been validated by an independent laboratory.

4. *Magnitude of the residue in plants.* Field residue trials were conducted with cymoxanil on potatoes at 19 test sites in the U.S. at rates equal to or higher than (up to 5×) the proposed maximum use rate with pre-harvest intervals as short as 0 days. No detectable cymoxanil residue (detection limit = 0.02 ppm) was found in any sample at any of the tested sites or rates.

5. *Magnitude of the residue in processed commodities.* Because there were no detectable residues present in potato samples treated at highly exaggerated rates, no detectable residues are expected in processed potatoes at

rates which would appear on the product label.

6. *Magnitude of the residue in animals.* Based on a ruminant metabolism study, no secondary tolerances in animal commodities are necessary.

B. Toxicological Profile of Cymoxanil

1. *Acute toxicity.* Technical cymoxanil has low acute toxicity. The acute oral LD_{50} is 960 mg/kg in rats. The acute dermal LD_{50} is >2000 mg/kg in rabbits. The 4-hour rat inhalation LC_{50} is >5.06 mg/L. Minimal transient irritation of the skin and eyes was observed in rabbits. Cymoxanil did not cause skin sensitization in guinea pigs. Cymoxanil should be classified as Toxicity Category III for oral and dermal toxicity and Toxicity Category IV for inhalation toxicity and skin and eye irritation potential.

2. *Genotoxicity.* A battery of *in vitro* and *in vivo* tests were conducted to determine the genotoxic potential of cymoxanil. Cymoxanil was negative for mutagenicity in *in vitro* bacterial (*Salmonella typhimurium* or *Escherichia coli* tester strains) and mammalian cell assays (Chinese hamster ovary (CHO) cells) and is therefore considered not mutagenic. Cymoxanil was positive for induction of chromosome aberrations in *in vitro* assays (CHO cells and human lymphocytes), but negative in 2 species of *in vivo* assays (rat clastogenicity and mouse micronucleus). The weight-of-evidence indicates that cymoxanil is not clastogenic. Cymoxanil was negative for induction of unscheduled DNA synthesis (UDS) in 1 *in vitro* assay but positive in another; however, it was negative for induction of UDS in both hepatocytes and spermatocytes when evaluated in *in vivo* assays.

Therefore, Dupont believes that the weight-of-evidence indicates that cymoxanil does not produce DNA damage. In summary, cymoxanil is not considered genotoxic, nor does it have the potential to induce heritable effects.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study in rats fed diets containing 0, 100, 500, or 1,500 ppm resulted in no-observed-adverse-effects-level (NOAELs) of 100 ppm for both parental rats (equivalent to 6.50 and 7.85 mg/kg/day for P1 males and females, respectively) and offspring (equivalent to 7.39 and 8.85 mg/kg/day for F1 males and females, respectively). The NOAELs were based on alterations in body weight parameters, food consumption and food efficiency in the parents at 500 ppm, and decreases in pup weights and viability in the offspring at 500 ppm. Based on these results, cymoxanil is not a reproductive toxin.

A developmental toxicity study was conducted with cymoxanil in rats at 0, 10, 25, 75, or 150 mg/kg/day on days 7-16 of gestation. The no-observable-effect levels (NOELs) for maternal and developmental effects were considered to be 10 mg/kg/day for both maternal toxicity (based on reduced weight gain and food consumption at 25 ppm and above) and developmental toxicity (based on effects that included fetal variations in ossification at 25 ppm and above).

A developmental toxicity study was conducted in rabbits at dose levels of 0, 4, 8 and 16 mg/kg/day. Cymoxanil was not considered maternally or fetally toxic at any dose level. A second rabbit study at 0, 8, 16 and 32 mg/kg/day demonstrated toxicity to the doe at 16 mg/kg/day. Changes in axial skeleton of the fetus were observed at all dose levels, but without direct relation to dosage. A third rabbit study was conducted at 0, 1, 4, 8, and 32 mg/kg/day. Maternal toxicity was observed at 8 mg/kg/day. Although skeletal variations were seen in some fetal groups, they were not considered related to cymoxanil since they were not statistically increased or dose related. A reevaluation of the combined results of all three rabbit studies using current statistical methods demonstrated NOAELs of 8 mg/kg/day for the doe and 4 mg/kg/day for the fetus.

In the absence of significant differences between maternal and fetal effect levels (revealed in both the rat and combined rabbit studies), cymoxanil is not considered a developmental toxin.

4. *Subchronic toxicity.* A 90-day feeding study was conducted in rats at dietary levels of 0, 100, 750, 1,500 or 3,000 ppm. Body weight effects, increased food consumption, decreased food efficiency, increased mean relative organ weights, and testicular (elongate spermatid degeneration) and epididymal histopathologic effects were observed at 1,500 and 3,000 ppm. The NOEL was 750 ppm (47.6 mg/kg/day males; 59.9 mg/kg/day females).

The potential neurotoxicity of cymoxanil was evaluated in rats as part of the 90-day feeding study at dietary levels of 0, 100, 750, 1,500 or 3,000 ppm. The NOEL for neurotoxicity was the highest dietary level tested, 3,000 ppm for male (224 mg/kg/day) and female (333 mg/kg/day) rats. Cymoxanil is judged not to be a neurotoxicant.

A 90-day feeding study was conducted in mice at dietary levels of 0, 50, 500 and 1,750, 3,500 or 7,000 ppm. The highest dietary level was terminated by the third week of the study due to severe toxicity. The NOEL was established at 50 ppm for female mice (11.3 mg/kg/day) based on body weight effects at 500 ppm; no NOEL was established for male mice due to body weight effects and increased liver weights at all dietary levels. Liver weight increases were observed in female mice at 1,750 and 3,500 ppm. No histopathologic alterations were found in male or female mice at levels up to 3,500 ppm.

A 90-day feeding study was conducted in dogs at dietary levels of 0, 100, 200 or 250/500 ppm (250 ppm for weeks 1 and 2; 500 ppm for the remainder of the study). No NOEL was established for female dogs due to lower body weight gain, food consumption and food efficiency at all dietary levels. The NOEL in males was 100 ppm (3 mg/kg/day) based on decreased body weight gain.

A 28-day repeated dose dermal study was conducted with rats at dosages of 50, 500 or 1,000 mg/kg with daily 6-hour exposures. No toxicologically significant effects were observed in any treatment group. The NOEL is considered to be 1,000 mg/kg/day.

5. *Chronic toxicity/oncogenicity.* A 12-month chronic feeding study was conducted in male dogs at dietary levels of 0, 50, 100 and 200 ppm and in female dogs at 0, 25, 50 and 100 ppm. The NOAELs for chronic toxicity were 100 ppm in male dogs (3.0 mg/kg/day) and 50 ppm in female dogs (1.6 mg/kg/day), based on body weight and food consumption effects in both sexes and decreased red cell parameters in males. No gross or histopathological effects were observed.

An 18-month oncogenicity study was conducted in mice at dietary levels of 0, 30, 300, 1,500 or 3,000 ppm. The NOEL was 30 ppm (4.19 and 5.83 mg/kg/day for males and females, respectively) based on histopathological effects in testis and liver for males and the mucosal lining of the gastrointestinal tract for females at 300 ppm. Cymoxanil is not considered oncogenic.

A 2-year combined chronic toxicity/oncogenicity study was conducted in rats at dietary levels of 0, 50, 100, 700 or 2,000 ppm. The NOEL for chronic effects was 100 ppm (4.08 and 5.36 mg/kg/day for male and female rats, respectively), based on decreased mean body weights, mean body weight gains, food consumption, and food efficiency; and gross and/or histopathological alterations of the retina, lymph nodes, lung, intestine, testes, and sciatic nerve at 700 ppm. Cymoxanil is not considered oncogenic.

6. *Animal metabolism*. An oral dose of radiolabelled cymoxanil was extensively metabolized and rapidly eliminated in the rat. More than 85% of the dosed radioactivity is eliminated in the excreta, mostly in the urine, within 48 hours. After 96 hours, less than 1% of the administered dose remained in the tissues. The major excretory products were polar metabolites such as 2-cyano-2-methoxyimino acetic acid, glycine and other amino acid conjugates. These metabolites are rapidly metabolized to other natural products. A minor metabolite, 1-ethyl-5,6-di-2,4(1*H*,3*H*)pyridinedione, was also identified and is postulated as an intermediate metabolite.

7. *Metabolite toxicology.* Cymoxanil breaks down rapidly in plants and animals into naturally occurring compounds. Because of this, no significant risk is expected from exposure to potatoes or other crops treated with cymoxanil.

8. *Endocrine effects.* No evidence of endocrine effects were observed upon comprehensive evaluation of data from the standard battery of EPA required toxicology studies. These animal studies were conducted at exposure levels that far exceed those likely to be experienced by a human. Thus, adverse endocrine effects are not expected to occur in humans (general population or sub-groups, including nursing infants and children).

This battery of tests included, but is not limited to, the following studies: reproductive, developmental, subchronic, chronic/oncogenicity and metabolism. Most of these studies included gross and histopathologic assessment of the endocrine organs (e.g., thyroid, mammary glands, and testes).

C. Aggregate Exposure

Cymoxanil is a fungicide used on crops including potatoes, tomatoes, and grapes. Cymoxanil is not registered for non-crop use in any country. Although cymoxanil is not registered in the U.S., DuPont's request for import tolerances on grapes and tomatoes is pending review at EPA.

No aggregate exposure considerations are required for cymoxanil because no residues are anticipated to occur in drinking water or from other non-occupational exposures. Human exposure to residues in food is the primary exposure consideration when calculating risk. Total chronic dietary exposure to the most sensitive sub-population (children 1–6 yrs.) is determined to be less than 3% of the Reference Dose (RfD). Details are given below:

1. *Dietary (Food) Exposure.* A complete and reliable database is available for the assessment of threshold effects of cymoxanil. Comparison of no effect levels (NOEL) for subchronic and chronic studies found that the dog was the most sensitive species with a NOEL of 1.6 mg/kg/day in the 1year study. The endpoint effects noted in this study were reduced body weight gain, food consumption, and food efficiency in females.

Applying a 100-fold safety factor, 0.016 mg/kg/day was selected as the reference dose (RfD) in the dietary risk evaluation system (DRES) analysis. No additional safety factor was used for infants or children since they are not more sensitive to cymoxanil toxicity as discussed in section E.2 of this document.

The ''worst-case'' DRES analysis included total potential dietary intake of cymoxanil residues from potatoes, grapes, and tomatoes. It was also assumed that 100% of these crops were treated with cymoxanil and that all commodities contained residues at the proposed tolerance levels (0.1 ppm). Analyses of actual field samples have detected no residues of cymoxanil above the limit of detection (0.02 ppm). Potato cells and processed potato waste may be fed to livestock. However, the lack of detectable cymoxanil residues in any feed item and the lack of transfer of cymoxanil to meat or milk in a ruminant metabolism study indicate there is no reasonable expectation of cymoxanil residue in meat and milk. Potatoes do not serve as a source of poultry feed, thus no residues are expected in poultry or eggs.

Using this conservative exposure scenario, the DRES estimates a theoretical maximum daily intake of 0.000216 mg/kg/day or 1.35% of the RfD for the general U.S. population. Since cymoxanil is unlikely to occur in drinking water, water was not included in this assessment (see Section D.2 of this document). The most sensitive sub-population is children (1–6 yrs.) with a predicted intake of 2.63% of the RfD. Using the conservative exposure assumptions described above, it is estimated that the cymoxanil exposure for infants and children ranges from 0.29% of the RfD for nursing infants to 2.63% for children 1–6 years old.

An acute dietary risk exposure analysis for cymoxanil was not performed. Since potatoes are the only commodity for which registration of cymoxanil is being sought, significant dietary impact to any U.S. population is not anticipated. Cymoxanil is not registered on grapes in Chile or tomatoes in Mexico, the major countries that import these commodities to the U.S. Therefore, exposure to cymoxanil from grapes and tomatoes imported into the United States would not be expected to contribute significantly to the U.S. diet. In addition, exposure to cymoxanil through drinking water is unlikely since cymoxanil degrades rapidly in soil and water as discussed in section D.2 of this document.

2. *Dietary (Drinking Water) Exposure.* It is unlikely that there will be exposure to significant residues of cymoxanil through drinking water supplies. Cymoxanil degrades rapidly in the environment. Studies to satisfy the environmental fate data requirements are included with this submission. Evaluation of these studies indicates the potential for cymoxanil residues to be detected in drinking water supplies at significant levels is minimal. Degradation from photolysis and both anaerobic and aerobic metabolism in soils occur rapidly. Degradation products also decline rapidly. The half-life of cymoxanil in soil under field conditions was 1 to 9 days. Although cymoxanil and its degradates are weakly adsorbed to the soil, they degrade so rapidly that movement into groundwater is unlikely. Should movement into surface or ground water occur, degradation will be very rapid. In water the photolytic half-life of cymoxanil is less than 2-days at neutral and acidic conditions, and its hydrolytic half-life at pH 9 is less than 1 hour.

3. *Non-dietary exposure.* Since cymoxanil is to be used on food crops only there will be no non-dietary non-occupational exposure.

D. Cumulative Effects

Given cymoxanil's unique chemistry, low acute toxicity, the absence of genotoxic, oncogenic, developmental, or reproductive effects, and low exposure potential (see section C), the expression of cumulative human health effects with cymoxanil and other natural or synthetic pesticides is not anticipated. The potential for cumulative effects of cymoxanil and other substances, that have a common mechanism of toxicity, has been considered and is not applicable. Cymoxanil is a unique cyanoacetamide and is chemically unrelated to any other commercial plant disease control agents. Its biochemical mode of action in fungi appears to be unique; it is theorized to act through inhibition of multiple cellular processes, but a definitive mechanism is not completely elucidated. Similarly, the mechanism of action underlying observed toxicological effects in mammals is not fully characterized and there is no reliable information to

suggest that cymoxanil has a mechanism of toxicity in common with any other compound.

E. Safety Determination

1. *U.S. population*. Dupont believes that the chronic dietary risk assessment demonstrates that an adequate margin of safety exists for all U.S. sub-populations under DRES consideration.

A ''worst case'' DRES analysis was performed using proposed tolerance levels for potatoes, tomatoes, and grapes and assuming 100% of all crops are treated. Using these conservative assumptions, the percentage of the RfD utilized by the general U.S. population is 1.35%. The most sensitive sub-population, children 1–6 yrs., utilized 2.63% of the RfD. These levels are well below those which would cause an appreciable risk of harm from aggregate exposure to cymoxanil residues.

2. *Infants and children*. Based on the current toxicological requirements, a complete and reliable database exists to assess the potential for additional sensitivity of infants and children to the residues of cymoxanil. Data from developmental and reproductive toxicity studies (see section B.3) show that developing and young animals are no more susceptible to prenatal and postnatal effects of cymoxanil than the adult animals. In addition, the NOAEL from the dog study proposed as the basis for the RfD is already more than 3-fold lower than the lowest NOAEL observed in immature animals in the developmental or reproductive studies. Therefore, Dupont concludes that the safety factor used for protection of adults is fully appropriate for the protection of infants and children; no additional safety factor is necessary.

Thus toxicity of cymoxanil to developing and young animals is no greater than to adults as demonstrated in the developmental and reproductive toxicity studies.

Nonetheless, children 1–6 yrs. are identified as the most sensitive sub-population in the chronic dietary risk analysis based on potential for exposure (i.e., food consumption patterns). This sub-population consumes more potatoes, grapes, and tomatoes than the general U.S. population and other sub-populations. The chronic DRES found children 1–6 yrs. utilized 2.63% of the RfD. The general U.S. population utilized 1.35% of the RfD and the exposure for infants and children ranged from 0.29% of the RfD for nursing infants to 2.63% for children 1–6 yrs.

F. International Tolerances

Cymoxanil, a fungicide used to control potato late blight, is currently registered for use on potatoes in 35 countries, including the major European countries. The following Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRL's) for cymoxanil on potatoes have been established: Belgium, Germany, Indonesia, Mexico, Netherlands, Portugal, Spain, Switzerland - 0.05 ppm, Austria, Brazil, Japan, Italy - 0.10 ppm, Hungary - 0.50 ppm, and Luxembourg - 2.0 ppm.

The U.S. Tolerance for potatoes being proposed is 0.10 ppm which is twice the limit of quantitation of 0.05 ppm in the residue enforcement method. Tolerances are not required for processed potatoes because no residues were detected (detection limit = 0.02 ppm) in the magnitude of residue study at highly exaggerated rates.

MRL's are also established internationally for cymoxanil on grapes, tomatoes, hops, tobacco and various other vegetables. MRL's on grapes range from 0.05–1.0 ppm and on tomatoes from 0.05–2.0 ppm. MRL's for all other crops range from 0.05–2.0 ppm. (PM 21)

3. Novartis Crop Protection, Inc.

PP 5E4526

EPA has received a pesticide petition (PP 5E4526) from Novartis Crop Protection, Inc. 410 Swing Road, Greensboro, NC 27401, proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the fungicide, difenoconazole, in or on the raw agricultural commodity bananas at 0.2 ppm.

Analytical method AG-575B (MRID 42806504) is proposed as the regulatory enforcement method. It is a revised version of AG-575A, which was used to determine residues of difenoconazole in or on bananas. The procedures in AG-575A remain unaltered in the revised method, AG-575B, which incorporates specificity data and methodology for megabore column gas chromatography. Procedural recoveries on banana substrates (peel and pulp), fortified prior to extraction at levels ranging from 0.02 ppm to 0.2 ppm, averaged 90.7+12% (n=42). Recoveries ranged from 60 to 115%. Storage stability has been demonstrated under frozen conditions for periods of up to 364 days.

A. Chemical Uses

Difenoconazole is the active ingredient in Sico 25EC, Sico 250EC, Score 25EC, and Score 250EC, fungicides that offer broad-spectrum control of several diseases in bananas and plantains. In the current petition, Sico and Score are being developed as foliar treatments for bananas. Difenoconazole is highly active at rates of 75 to 100 g a.i./ha.

B. Difenoconazole Safety

Novartis has submitted over 20 toxicity studies in support of tolerances for difenoconazole. Difenoconazole has a low order of acute toxicity, minimal irritation potential, and no sensitization potential. There was no evidence of genotoxicity, and it is not fetotoxic, embryolethal, or teratogenic. It is not a reproductive toxin. The main target organ of toxicity was the liver in the species tested. There was an increase in liver tumors only in mice, and only, according to the Carcinogenicity Peer Review Committee, at doses considered excessively high for carcinogenicity testing. The EPA has concluded that for the purpose of risk characterization, the Margin of Exposure (MOE) approach (threshold model) should be used for quantification of human risk. Margins of exposure are extremely high for the US population and all population subgroups for both chronic effects and acute toxicity.

The following mammalian toxicity studies were conducted and submitted in support of tolerances for difenoconazole. No-observable-effect levels are consistent with those published in the **Federal Register** of August 24, 1994 (FR 59 43491).

A rat acute oral study with an LD_{50} of 1,453 mg/kg.

A rabbit acute dermal study with an LD_{50} of >2010 mg/kg.

A rat acute inhalation study with an LC_{50} of >3.285 mg/L.

A primary eye irritation study in the rabbit which showed slight irritation.

A primary dermal irritation study in the rabbit which showed slight irritation.

A dermal sensitization study in the guinea pig which showed no irritation.

A 13-week rat feeding study identified liver as a target organ and had a no-observable-effect level (NOEL) of 20 ppm.

A 13-week mouse feeding study identified liver as a target organ and had a NOEL of 20 ppm.

A 26-week dog feeding study identified liver and eye as target organs and had a NOEL of 100 ppm.

A 21-day dermal study in rabbits had a NOEL of 10 mg/mg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

A 24-month feeding study in rats had a NOEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There

was no evidence of an oncogenic response.

An 18-month mouse feeding study had an overall NOEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOEL was 300 ppm.

A 12-month feeding study in dogs had a NOEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

An oral teratology study in rats had a maternal NOEL of 16 mg/kg/day based on excess salivation and decreased body weight gain and food consumption. The developmental NOEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification.

An oral teratology study in rabbits had maternal NOEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion. The developmental NOEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including slight increase in post-implantation loss and resorptions, and decreased fetal weight.

A 2-generation reproduction study in rats had a parental and reproductive NOEL of 25 ppm based on significantly reduced female body weight gain, and reductions in male pup weights at 21 days.

There was no evidence of the induction of point mutations in an Ames test.

There was no evidence of mutagenic effects in a mouse lymphoma test.

There was no evidence of mutagenic effects in a nucleus anomaly test with Chinese hamsters.

There was no evidence of induction of DNA damage in a rat hepatocyte DNA repair test.

There was no evidence of induction of DNA damage in a human fibroblast DNA repair test.

C. Threshold Effects

1. *Chronic effects.* Based on the data from chronic studies in rats, mice, and dogs, the Reference Dose (RfD) for difenoconazole is 0.01 mg/kg/day **Federal Register** of August 24, 1994 (FR 59 43492). The RfD for difenoconazole is based on the chronic study in rats with a threshold No-Observable-Effect Level of 1 mg/kg/day and an uncertainty factor of 100.

2. *Acute toxicity.* The EPA has concluded that the dietary acute margin of exposure (MOE) for developmental toxicity was 25,000 for high exposure in the females 13+ subgroup. The agency is generally not concerned unless the MOE is below 100 for substances whose acute NOEL is based on animals studies.

Novartis concurs, and has also considered that since the percentage of the RfD utilized in the chronic exposure analysis for all population subgroups is less than 10, it is highly unlikely that any acute dietary exposure scenario would utilize a significant percentage of the RfD.

Since margins of exposure of 100 or more are considered satisfactory, there is no concern for acute dietary exposure for the US population, for various population subgroups, or for either gender.

3. *Non-threshold effects (Carcinogenicity).* The Health Effects Division Carcinogenicity Peer Review Committee (CPRC) evaluated the weight-of-the-evidence on difenoconazole with reference to its carcinogenic potential. The CPRC concluded that difenoconazole should be classified a Group C carcinogen, and for the purpose of risk characterization the Margin of Exposure (MOE) approach should be used for quantification of human risk.

In the 18-month study with CD-1 mice, there was a statistically significant increase in hepatocellular adenomas, carcinomas, and combined adenomas/ carcinomas in both sexes, but only at dose levels which were considered excessively high for carcinogenicity testing. This is considered very weak evidence of carcinogenic potential. Additionally, there was no evidence of carcinogenicity in either sex of CD rat after 24 months, and there was no evidence of genotoxicity. Therefore, a threshold model should be used for estimating risk. The CPRC determined that a NOEL of 4.7 mg/kg/day, based on endpoints related to hepatic tumor development, should be used for calculating MOE's. The margin of exposure, calculated using worst case assumptions, was 9,958 for the US population.

D. Aggregate Exposure

When the potential dietary exposure to difenoconazole is calculated, the theoretical maximum residue concentration (TMRC) of 0.00041 mg/ kg/day utilizes 4% of the RfD for the overall US population. For the most exposed population subgroups, children and non-nursing infants, the TMRC is 0.000946 mg/kg/day, utilizing 9% of the RfD (**Federal Register**, August 24, 1994 FR 59 43492).

Novartis has conducted another exposure analysis using additional crops and similar conservative assumptions. In this analysis, oats, barley, and bananas (pending import tolerance) were included in addition to wheat. Tolerances or proposed tolerances were 0.1 ppm each for wheat, oats, and barley, and 0.2 ppm for bananas. Tolerances were 0.01 ppm for milk and 0.05 ppm for all other commodities: beef, goat, horse, rabbit, sheep, pork, turkey, eggs, chicken, and other poultry. Very conservative assumptions were used to estimate residues (i.e. 100% of all wheat, oats, barley and imported bananas used for human consumption or forage was treated and all RACs contained tolerance level residues). These estimates result in a extreme overestimate of human dietary exposure. Calculated TMRC values from these assumptions utilize 4.7% of the RfD for the US population and 12.51% of the RfD for non-nursing infants.

Although the import tolerance for bananas would not lead to the exposure of the general population to residues of pesticides in drinking water, this source of exposure was considered in the risk assessment. Difenoconazole is currently used in the U.S. as a seed treatment and residues are, therefore, incorporated into the soil at very low rates (0.0125 to 0.025 lb a.i./100 lb of seed). The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil adsorption/ desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and would not be expected to reach aquatic environments. For these reasons and because of the low use rate, exposures to residues in ground water are not anticipated.

Non-occupational exposure for difenoconazole has not been estimated since the current registration in the U.S. is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

Novartis has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Novartis has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Novartis has no information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Novartis is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

E. Safety Determination

1.*U.S. population*. Reference Dose (RfD); using the very conservative exposure assumptions described above, and based on the completeness of the toxicity data base for difenoconazole, Novartis calculates that aggregate exposure to difenoconazole utilizes <5% of the RfD for the US population based on chronic toxicity endpoints (NOEL = 1 mg/kg/day). When using the carcinogenic NOEL of 4.7 mg/kg/day and the margin of exposure approach recommended by the CPRC, approximately 1% of the RfD is utilized.

If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the highest exposed population subgroup. EPA generally has no concern for exposures below 100% of the RfD. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime.

2. *Infants and children.* Developmental toxicity and 2-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels which did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the 2-generation reproduction study. Therefore, Novartis concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole.

F. Estrogenic Effects

Developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime.

Difenoconazole has not been found in raw agricultural commodities at the limit of quantification. Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential to interfere with the endocrine system, and there is no risk of endocrine disruption in humans.

G. Chemical Residues

The nature of the residue is adequately understood in plants and animals. The metabolism of difenoconazole has been studied in wheat, tomatoes, potatoes, and grapes. The metabolic pathway was the same in these 4 separate and distinct crops. There are no Codex maximum residue levels established for residues of difenoconazole in bananas. Novartis has submitted a practical analytical method for detecting and measuring levels of difenoconazole in or on food with the limit of quantitation that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA will provide information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from the Field Operations Division, Office of Pesticide Programs. Confirmatory methods have also been supplied.

Eleven field residue studies were conducted in the major banana-producing regions of Central America (Belize, Costa Rica, Guatemala), South America (Ecuador), and Mexico. Up to 8 applications were made at the label maximum of 100 g a.i./ha. Some applications were made at a 200 g a.i./ha (2×) rate for comparison purposes. Samples of bagged (standard commercial practice in many countries) and unbagged bananas were obtained 0, 1, and 2 days after the last application. Ten studies were conducted using ground equipment and one study was applied by air. Six replicate bunches were collected in several studies to determine sample variation. Selected samples were split; one-half was frozen immediately and the other half was stored under refrigerated or room temperature conditions to mimic typical transport to market. Samples were separated into peel and pulp for analysis using analytical method AG-575A.

Difenoconazole was found in only 4 of 76 pulp samples at the 1× rate and 5 of 36 samples at the exaggerated (2×) rate. The maximum residues found in pulp were 0.03 ppm and 0.05 ppm for the 1× and 2× treatments, respectively. On a whole fruit basis, the maximum residues found for the 1× and 2× treatments were 0.16 ppm and 0.24 ppm, respectively. Residues in bagged fruit were generally lower than unbagged fruit. Residues were independent of the preharvest intervals (PHIs) used in these studies. The data support a 0.2 ppm tolerance in bananas with no PHI.

There were no differences in residues between samples of green fruit frozen immediately and fruit allowed to ripen at temperatures normally encountered in transit to the US, indicating some residue stability even at temperatures above freezing.

Freezer storage stability has also been demonstrated. Banana whole fruit samples were macerated, fortified at 0.2 ppm with difenoconazole, and stored for one year in the freezer. Samples analyzed at 0-, 28-, 84-, 168-, and 364-day intervals exhibited no degradation of the difenoconazole, demonstrating stability under these storage conditions.

Information on the transfer of residues to animals is not required or relevant to this petition. Since there are no animal feedstuffs produced from this use on bananas, transfer of residues to livestock will not occur.

There are no Codex tolerances established for difenoconazole in bananas.

H. Environmental Fate

Although the import tolerance for bananas would not lead to the exposure of the general population to residues of pesticides in the environment, these sources of exposure were considered in the risk assessment. Difenoconazole is hydrolytically stable in solution at 25 degrees Celcius at pH 5, 7, and 9. The aerobic soil metabolism half-life ranges from 75 to over 1,000 days in various soils and environmental conditions. Difenoconazole is considered to be immobile in soil. (PM 22)

4. Novartis Crop Protection Inc.

PP 6F4723

EPA has received a pesticide petition (PP) 6F4723 from Novartis Crop Protection, Inc. (Novartis), P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. Section 346a, to amend 40 CFR 180.474 by establishing revised tolerances for residues of the fungicide CGA329351 ([(R)-2-[(2,6-dimethylphenyl)-methoxyacetylamino]-propionic acid methyl ester). CGA329351 is the more active enantiomer contained in the racemic fungicide metalaxyl. Novartis believes

that because of its systemic and intrinsic activity, effective disease control can be obtained with mefenoxam at one-half the rate required for metalaxyl. This petition reflects the reduced dietary exposure associated with using CGA329351.

A. Residue Chemistry

1. *CGA329351 uses.* CGA329351 is highly efficacious against Pythium spp., Phytophthora spp., and fungi which cause downy mildews of turf, ornamental, and agricultural crops. Application methods include seed treatment, in-furrow, soil drenches, and/or foliar.

2. *Metabolism*. Novartis believes the studies supporting this CGA329351 petition well characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of CGA329351 and its metabolites which contain the 2,6-dimethylaniline (DMA) moiety.

3. *Analytical methodology.* Novartis has submitted a practical analytical method involving extraction, filtration, acid reflux, steam distillation, and solid phase cleanup with analysis by confirmatory gas chromatography using Nitrogen/Phosphorous (N/P) detection. A total residue method is used for determination of the combined residues of CGA329351 and its metabolites which contain the 2,6-dimethylaniline (DMA) moiety. The limit of quantitation (LOQ) for the method is 0.05 ppm.

4. *Magnitude of residue.* This petition is supported by field residue trials conducted at various rates, timing intervals, and applications methods to represent the use patterns which would most likely result in the highest residues. In comparative side-by-side residue tests where CGA329351 was applied at one-half the labeled use rate of metalaxyl, resultant CGA329351 residues averaged one-half of those produced from the use of metalaxyl. For all samples, the total residue method was used for determination of the combined residues of parent and its metabolites which contain the DMA moiety.

B. Toxicological Profile of CGA329351

Rat acute oral study with a LD_{50} value of 490 mg/kg.

Rat acute dermal study with a LD_{50} > 2000 mg/kg.

Rat inhalation study with a LC_{50} > 2.29 mg/liter air.

Primary eye irritation study in rabbit showing CGA329351 as severely irritating.

Primary dermal irritation study in rabbit showing CGA329351 as slightly irritating.

Skin sensitization studies in guinea pigs (Maximization and Buehler Test) showing CGA329351 is not a sensitizer.

A 28-days cumulative toxicity study in rats with a No Observed Effect Level (NOEL) of 50 mg/kg based on liver changes.

A 90-day subchronic dietary toxicity study in rats with a NOEL of 250 ppm based on liver changes.

A 90-day subchronic dietary toxicity study in dogs with a NOEL of 250 ppm basedon changes in blood biochemistry and hematology indicative of functional liver changes.

A 21-day dermal toxicity study in rats with a NOEL equal to or higher than the limit dose of 1,000 mg/kg. No local or systemic signs of toxicity were found.

A 6-month dietary toxicity study in dogs with a NOEL of 250 ppm based on changes in blood biochemistry indicative of hepatocellular damage.

A 24-month combined chronic toxicity / carcinogenicity study conducted in rats with a NOEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen.

A 24-month oncogenicity study conducted in mice with a NOEL of 250 ppm based on liver changes. No evidence of oncogenicity was seen.

Teratology study in rats with a maternal NOEL of 10 mg/kg based on reduced body weight gain. The fetuses remained entirely unaffected at the highest dose tested, 250 mg/kg.

Teratology study in rabbits with a maternal NOEL of 150 mg/kg based on body weight loss. The developmental NOEL was greater than or equal to the highest dose tested, 300 mg/kg.

3-generation reproduction study in rats with a NOEL of 1,250 ppm, which was the highest dose tested. The treatment had no effect on reproduction or fertility.

In vitro gene mutation test: Ames test - negative.

In vitro chromosomal aberration test: Chinese hamster ovary (CHO)- negative.

In vitro gene mutation tests: Ames tests (3 independent studies) - negative; gene mutation in mouse lymphoma cells - negative; reverse mutation in *Saccharomyces cerevisiae* - negative.

In vitro chromosomal aberration tests: Chinese hamster bone marrow cytogenetic test - negative.

DNA repair study in rat hepatoctes - negative.

Dominant lethal study in mouse - negative.

C. Threshold Effects

1. *Chronic effects.* Based upon chronic toxicity data, Novartis believes the Reference Dose (RfD) for CGA329351 is 0.08 mg/kg/day. This RfD is based on a 6-months feeding study conducted in dogs using an uncertainty factor of 100. The No-Observed Effect Level was 8 mg/kg/day.

2. *Acute toxicity.* The risk from acute dietary exposure to CGA329351 is considered to be very low. The NOEL in a 28-day study was 50 mg/kg, which is 6-fold higher than the chronic NOEL. Since chronic exposure assessment did not result in any unacceptable exposure for even the most impacted population subgroup, it is anticipated that also the acute exposure will be in an acceptable range.

3. *Non-threshold effects.* From toxicity studies supporting the registration of CGA329351, the active ingredient is classified as a Group ''E'' compound (evidence of noncarcinogenicty for humans). There was no evidence of carcinogenicity in a 24-month feeding trial in mice nor in a 24-month feeding study in rats at the dosage levels tested. The doses tested were adequate for identifying a cancer risk.

D. Aggregate Exposure

1. *Dietary Exposure.* For the purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC). The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100 percent of all crops for which tolerances are established are treated. Residue studies indicate a significant reduction in plant residue levels for CGA329351 relative to those for metalaxyl. With use rates that are one-half that of metalaxyl, CGA329351 plant residue levels are also 50% lower. Novartis has requested the following tolerances for CGA329351:

commodity	parts per million (ppm)
Alfalfa, forage	3.0 ppm
Alfalfa, hay	10.0 ppm
Almonds	0.3 ppm
Almond, hulls	5.0 ppm
Apples	0.1 ppm
Asparagus	3.5 ppm
Berries Group 1.0 ppm.	
Brassica (Cole) Leafy Vegetable Crop Grouping (Except Broccoli, Cabbage, Cauliflower, Brussels Sprouts, Mustard Greens).	0.05 ppm
Broccoli	1.0 ppm
Brussels Sprouts	1.0 ppm

commodity	parts per million (ppm)
Cabbage	0.5 ppm
Cattle (fat, liver, and kidney)	0.2 ppm
Cattle, meat and meat by products (except kidney and liver).	0.05 ppm
Cauliflower	0.5 ppm
Cereal Grains (Except Barley, Oats, and Wheat).	0.05 ppm
Citrus Fruits Group	0.5 ppm
Clover, forage	0.5 ppm
Clover, hay	1.3 ppm
Cottonseed, undelinted seed	0.05 ppm
Cranberries	2.0 ppm
Cucurbit Vegetables Group	0.5 ppm
Eggs	0.05 ppm
Fruiting Vegetables	0.5 ppm
Ginseng	1.5 ppm
Goats (fat, liver, and kidney)	0.2 ppm
Goat, meat and meat by products (except kidney and liver).	0.05 ppm
Grapes	1.0 ppm
Grass, Forage	5.0 ppm
Grass, Hay	12.5 ppm
Hogs (fat, liver, and kidney)	0.2 ppm
Hogs, meat and meat by products (except kidney and liver).	0.05 ppm
Hops cones, dried	10.0 ppm
Horses (fat, liver, and kidney)	0.2 ppm
Horses, meat and meat by products (except kidney and liver).	0.05 ppm
Leafy Vegetables Group (Except Brassica, Except Spinach).	2.5 ppm
Leaves of Root and Tuber Vegetables (human food or animal feed) Group.	7.5 ppm
Legume Vegetable Group, Foliage of.	4.0 ppm
Legume Vegetables (succulent or dried) Group, except Soybeans.	0.1 ppm
Milk	0.01 ppm
Mustard Greens	2.5 ppm
Bulb Vegetables Group	5.0 ppm
Peanut, hay	10.0 ppm
Peanut, nutmeat	0.1 ppm
Pineapples	0.05 ppm
Poultry (fat, liver, and kidney)	0.2 ppm
Poultry, meat and meat by products (except kidney and liver).	0.05 ppm
Root and Tuber Vegetables, Except Ginseng.	0.3 ppm
Sheep (fat, liver, and kidney)	0.2 ppm
Sheep, meat and meat by products (except kidney and liver).	0.05 ppm
Soybeans	0.5 ppm
Spinach	5.0 ppm
Stone Fruit Group	0.5 ppm
Strawberries	5.0 ppm
Sunflower, seed	0.05 ppm
Walnuts	0.3 ppm
Papaya (Regional tolerance for Hawaii).	0.05 ppm
Citrus Oil	3.5 ppm
Potatoes, granules / flakes	1.0 ppm
Potatoes, chips	1.0 ppm
Prunes	2.0 ppm
Raisins	3.0 ppm
Tomatoes, puree	1.5 ppm
Apples, pomace	0.2 ppm
Citrus, dried pulp	3.5 ppm
Peanut, meal	0.5 ppm
Pineapple, process residue	0.3 ppm
Potato, waste from processing	5.0 ppm
Soybeans, hulls	1.0 ppm
Soybeans, meal	1.0 ppm
Sugar beets, molasses	2.5 ppm
Sunflower seeds, meal	0.1 ppm
Wheat, milling byproducts	1.0 ppm

The following indirect or inadvertent tolerances also have been requested:

commodity	parts per million (ppm)
Barley, forage	2.0 ppm
Barley, grain	0.2 ppm
Barley, hay	6.0 ppm
Barley, straw	2.0 ppm
Forage, Fodder, and Straw of Cereal Grains Group (except wheat, barley, and oats) Fodder, Forage and Straw.	1.0 ppm
Forage, Fodder, and Straw of Cereal Grains Group (except wheat, barley, and oats) Fodder, Forage and Hay.	3.0 ppm
Oat, forage	2.0 ppm
Oat, hay	6.0 ppm
Oat, grain	0.2 ppm
Oat, straw	2.0 ppm
Wheat, forage	2.0 ppm
Wheat, hay	6.0 ppm
Wheat, grain	0.2 ppm
Wheat, straw	2.0 ppm
Barley, milling fractions	1.0 ppm
Oat, milling fractions	1.0 ppm
Wheat, milling fractions	1.0 ppm

In conducting this exposure assessment, Novartis has made very conservative assumptions -- 100% of all requested commodities will contain CGA329351 at tolerance levels which result in an overestimate of human exposure.

2. *Drinking water exposure.* Novartis anticipates the potential exposure from residues of CGA329351 in drinking water to be relatively low. Although the potential for groundwater contamination cannot be completely excluded where soils are highly permeable and the water table is shallow, the reduced use rate associated with CGA329351 reduces potential groundwater contamination relative to that for metalaxyl. Based on historical groundwater monitoring data for metalaxyl from 5 states, levels typically do not exceed 3 ppb. This contamination level would lead to a potential uptake of 0.09 x 10-3 mg/kg/day CGA329351 (for an adult person consuming 2 liters of water per day), which is equivalent to 0.1% of the RfD. On the basis of this worst case estimate for CGA329351, Novartis concludes that the contribution of any potential groundwater contamination will be negligible.

3. *Non-dietary exposure.* In addition to uses on agricultural crops, CGA329351 is registered for use against soil-borne disease in turf and ornamentals. The product, however, is not used residentially by homeowners and potential exposure to the general public is extremely low. Novartis believes the non-occupational exposure to the general public from turf andornamentals uses of CGA329351 to be negligible.

Novartis believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by CGA329351 would be cumulative with those of any other chemicals. Consequently, Novartis is considering only the potential exposure to CGA329351 in its aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Under the conservative exposure assumptions of 100 percent of all crops for which tolerances are established are treated, and CGA329351 residue levels are at tolerance level (i.e., TMRC), less than 9% of the RfD will be utilized by the U.S. general population. EPA generally has no concern for exposures below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data supporting this petition, Novartis believes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of CGA329351, including anticipated dietary exposure and all other types of non-occupational exposures.

2. *Infants and children.* There is no indication that CGA329351 interferes with the pre-or neonatal development, even when experimental animals were exposed to very high doses leading to maternal toxicity. Infants and children are not expected to show any particular sensitivity to CGA329351. Calculated on the basis of the TMRC, utilization of RfD from dietary exposure of children is estimated as: 6% for nursing infants less than 1 year old, 16% for non-nursing infants less than 1 year old, 18% for 1 to 6 year old and 13% for children 7–12 years old.

Novartis believes that under the worst case assumptions which overestimate exposure to infants and children, there is a reasonable certainty that no harm

will result to infants and children form aggregate exposure to CGA329351.

F. Estrogenic Effects

CGA329351 does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Furthermore, supporting developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication of any effects on endocrine function related to development and reproduction. Subchronic and chronic treatment did not induce any morphological changes in endocrine organs and tissues.

G. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of CGA329351 in or on raw agricultural commodities. (PM 21)

[FR Doc. 97–19669 Filed 7–24–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5860–9]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Dorney Road Landfill Superfund Site; De Minimis Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to sections 104 and 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604 and 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Dorothy and Russell Kulp for response costs incurred by the United States Environmental Protection Agency at the Dorney Road Landfill Superfund Site, Lehigh and Berks Counties, Pennsylvania.

DATES: Comments must be provided on or before August 25, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Dorney Road Landfill Superfund Site, Lehigh and Berks Counties, Pennsylvania, U.S. EPA Docket No. III–97–85–DC.

FOR FURTHER INFORMATION CONTACT: Pamela Lazos (215) 566–2658, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of de minimis settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Dorney Road Landfill Superfund Site in Lehigh and Berks Counties, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on May 14, 1997, and is subject to review by the public pursuant to this document. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee.

The settling parties have agreed to provide the United States Environmental Protection Agency, or its designee, access to their property so that response actions may be conducted on that property, and not to interfere with those response actions. This administrative settlement is subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

EPA is entering into this agreement under the authority of sections 122(g)(4), 104 and 107 of CERCLA, 42 U.S.C. 9622(g)(4), 9604 and 9607. Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs.

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement until August 25, 1997. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Pamela Lazos at (215) 566-2658.

Stanley L. Laskowski,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 97–19641 Filed 7–24–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5860–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Dorney Road Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative settlement pursuant to sections 122 and 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622 and 9604. This proposed settlement is intended to resolve the liability under CERCLA of Robert and Melinda Tercha for response costs incurred by the United States Environmental Protection Agency at the Dorney Road Landfill Superfund Site, located in both Lehigh and Berks Counties, Pennsylvania.

DATES: Comments must be provided on or before August 25, 1997.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Dorney Road Landfill Superfund Site, Lehigh and Berks Counties, Pennsylvania, U.S. EPA Docket No. III–97–84–DC.

FOR FURTHER INFORMATION CONTACT: Pamela Lazos, (215) 566–2658, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of administrative settlement: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Dorney Road Landfill Superfund Site in Lehigh and Berks Counties, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection

Agency, Region III's Regional Administrator, on May 14, 1997, and is subject to review by the public pursuant to this document. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee.

The United States has performed a financial analysis and determined that the settling parties do not have the financial ability to pay response costs incurred at the Site. The settling parties have agreed to grant access to their property to the United States Environmental Protection Agency, or its designee, so that response actions may be conducted on that property, and not to interfere with those response actions. EPA is entering into this agreement under the authority of sections 122 and 104 of CERCLA, 42 U.S.C. 9622 and 9604. Section 122 of CERCLA, 42 U.S.C. 9622, authorizes settlements with parties to allow them to resolve their liabilities under CERCLA. The grant of a covenant not to sue in exchange for access and non-interference is in the public interest and consistent with the National Contingency Plan.

This administrative settlement is subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement until August 25, 1997. A copy of the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Pamela Lazos at (215) 566–2658.

Stanley L. Laskowski,

Acting Regional Administrator, EPA, Region III.

[FR Doc. 97–19642 Filed 7–24–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 8, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Gordon M. Hatch, Portales, New Mexico; to acquire an additional 2.03 percent, for a total of 25.51 percent, of the voting shares of Portales National Bancshares, Inc., Portales, New Mexico, and thereby indirectly acquire Portales National Bank, Portales, New Mexico.

2. West U. Limited, Bradley F. Bracewell, Jr., General Partner, Houston, Texas; to acquire a total of 56.27 percent of the voting shares of First University Corporation, Houston, Texas, and thereby indirectly acquire West University Bank, N.A., Houston, Texas.

Board of Governors of the Federal Reserve System, July 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19585 Filed 7–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1997.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Joe Lecil Cates, and Roger Kevin Cates, both of Leedy, Oklahoma; to acquire voting shares of Western Oklahoma Bancshares, Inc., Elk City, Oklahoma, and thereby indirectly acquire Bank of Western Oklahoma, Elk City, Oklahoma.

2. Leland Spanjer, Cozad, Nebraska, in his capacity as Personal Representative of the Estate of Clifford G. Young; to acquire voting shares of C.S.B. Co., Cozad, Nebraska, and thereby indirectly acquire Cozad State Bank and Trust Company, Cozad, Nebraska, and First National Bank of Chadron, Chadron, Nebraska.

Board of Governors of the Federal Reserve System, July 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19673 Filed 7–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Chase Manhattan Corporation and Chase Holding Delaware Inc., New York, New York; to acquire 100 percent of the voting shares of Chase Trust Company, National Association, Los Angeles, California a *de novo* bank.

2. First Financial Caribbean Corporation, San Juan, Puerto Rico; to become a bank holding company by acquiring 100 percent of the voting shares of Doral Bank, San Juan, Puerto Rico. Doral Bank is the proposed commercial bank successor to Doral Savings Bank, FSB.

In connection with this application, Applicant has also applied to acquire Doral Mortgage Corporation, Hato Rey, Puerto Rico, and thereby engage in making, acquiring, or servicing mortgages loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Big Lake Financial Corporation, Okeechobee, Florida; to merge with CNB Financial Corporation, Clewiston, Florida, and thereby indirectly acquire Clewiston National Bank, Clewiston, Florida.

Board of Governors of the Federal Reserve System, July 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19584 Filed 7–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to acquire 100 percent of the voting shares of The Sabina Bank, Sabina, Ohio.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire up to 100 percent of the voting shares of Farmers Bancshares of Oberlin, Inc., Oberlin, Kansas, and thereby indirectly acquire Farmers National Bank, Oberlin, Kansas.

2. Western Bank, Albuquerque, New Mexico, and ESOP and Trust, Albuquerque, New Mexico; to become a bank holding company by acquiring 26.14 percent of the voting shares of Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, July 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19674 Filed 7–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. KeyCorp, Cleveland, Ohio; to engage through its wholly owned subsidiary, Key Capital Markets, Inc., Cleveland, Ohio, in underwriting and dealing in, to a limited extent, all types of debt and equity securities (other than ownership interests in open-end investment companies) and providing such services as are a necessary incident thereto, *See, J.P. Morgan & Co., Incorporated, et al.*, 75 Fed. Res. Bull. 192 (1989), as modified by subsequent orders; in financial and investment advisory activities under § 225.28(b)(6) of the Board's Regulation Y; in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and in investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y. These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. BCB Bancorp, Inc., Chippewa Falls, Wisconsin; to engage *de novo* through its subsidiary, Heartland Data Center, Inc., Cameron, Wisconsin, in providing data processing services to local, non-affiliate financial institutions, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19675 Filed 7–24–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 30, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–19765 Filed 7–23–97; 11:08 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) is announcing an opportunity for public comment on the proposed extension of OMB approval under the Paperwork Reduction Act for ''collection of information'' requirements contained in the Alternative Fuel Rule, 16 CFR Part 309.

DATES: Submit written comments on the collection of information on or before September 23, 1997.

ADDRESSES: Send written comments to Elaine W. Crockett, Attorney, Office of the General Counsel, Room 598, 6th St. and Pennsylvania Ave., N.W., Washington, DC 20580. All comments should be identified as responding to this notice.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Alternative Fuel Rule.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the FTC's functions, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Alternative Fuel Rule, 16 CFR Part 309—(OMB Control Number 3084–0094)—Extension

The Energy Policy Act of 1992 (''EPA 92'') established a comprehensive national energy policy to increase U.S. energy security gradually and steadily in cost-effective and environmentally beneficial ways. EPA 92 directed the Commission to establish uniform labeling requirements for alternative fuels, i.e., non-liquid alternative fuels, and alternative fueled vehicles (AFVs). (A separate FTC Rule, the Fuel Rating Rule, 16 CFR Part 306, implements a statutory requirement that refiners, producers and importers of liquid automotive fuels must determine the fuel rating of the automotive fuels that they distribute, which include liquid alternative fuels. Both Rules contain requirements relating to fuel rating determinations, certifications, posting, and recordkeeping.)

On May 9, 1995, the Commission issued the Alternative Fuel Rule, which requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels, and on labels on AFVs. To ensure the accuracy of the labeling disclosures, the Rule also requires that sellers maintain records substantiating the product-specific disclosures that they include on these labels. The labeling requirements provide consumers with reliable and comparable information about the fuel ratings of similar types of fuel land alternative fueled vehicles. The primary purpose of the recordkeeping requirements is to preserve evidence of compliance with the Rule.

Burden statement: The Rule primarily establishes determination, certification, labeling, and recordkeeping requirements. When the Rule was issued in 1995, the FTC found that the non-liquid alternative vehicle fuel industry consisted of approximately 1,600 members, of which approximately 1,300 import, produce, refine, distribute or retail compressed natural gas to the public for use in alternative vehicles. The FTC estimated that approximately 50 industry members manufacture or distribute electric vehicle fuel dispensing systems and that no more than 250 companies retail electricity to the public through electric vehicle fuel dispensing systems. In addition, the FTC found that approximately 58 companies manufacture alternative fueled vehicles. These companies also are subject to labeling and recordkeeping requirements. Staff at Department of Energy inform us that current numbers are approximately the same as they were in 1995.

All of the requirements relating to the processes involved in fuel rating determination, certification, labeling, and recordkeeping also remain the same. No provisions in the Alternative Fuel Rule have been amended or changed in any manner. We have, however, reduced the 1995 total burden estimate of 22,500 hours because, as stated in the original application for PRA clearance, it is now and always has been common practice for industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and determine how to market them. The 1995 burden estimates were based on the recognition that the Rule would initially create a burden of implementing a system that standardizes the various processes involved. Burden, as defined by OMB, means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 5 CFR 1320.2(b)(1). Accordingly, in 1995, we estimated the burden hours as follows:

Fuel Rating Determination: 2 hours × 350 industry members = 700 burden hours.

Fuel Rating Certification: 24 hours × 350 industry members = 8,400 burden hours.

Labeling: 1 hour × 1,400 industry members = 1,400 burden hours.

Recordkeeping associated with fuel rating determination and certification: 6 minutes × 1,600 industry members = 160 burden hours.

AFV labeling: producing: 2.5 hours × 40 models = 100 burden hours; posting: 2 minutes × 350,000 AFVs = 11,667 burden hours; recordkeeping: 30 minutes × 58 industry members = 29 burden hours.

Total 1995 burden hours: 22,500 (rounded).

As indicated above, ''burden'' for OMB purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). One-time letters of certification or the use of permanent marks or labels on electric vehicle fuel dispensing systems may be used once and thereafter remain in effect for several years. Also, the specifications for labels were designed to produce a label that would withstand the elements for several years. Nonetheless, there is still some burden associated with producing, distributing, posting, and maintaining new labels. There also will be some burden associated with new or revised certification of fuel ratings. Accordingly, we have revised the burden hour estimates as follows:

(Fuel Rating Determination numbers are no longer applicable because these numbers are no longer associated with start-up costs and are determined during the ordinary course of business).

Fuel Rating Certification: 1 hour×350 industry members=350 burden hours.

Labeling: 1 hour×280 industry members=280 burden hours. (This calculation assumes that only 20% of 1,400 industry members will be affected because it is unnecessary to replace labels each year.)

Recordkeeping associated with fuel rating determination and certification: 6 minutes×1,600 industry members=160 burden hours.

AFV labeling: producing: 2.5 hours×5 new models per year=12.5 burden hours; posting: 2 minutes×20,000 new AFVs per year=667 burden hours. (The number of new AFVs per year was determined after discussions with staff at the Department of Energy.); recordkeeping: 30 minutes×58 industry members=29 burden hours.

Total 1997 burden hours: approximately 1,500 (rounded).

To re-emphasize, the FTC has not amended, nor is it in the process of amending, the Alternative Fuel Rule. The burden hours associated with the Rule have been recalculated because, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standards systems and processes. In addition, the FTC has reduced the estimated burden hours because the industry complies with these requirements in the ordinary course of business, and the definition of ''burden'' excludes effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Therefore, the cost to the industry associated with complying with the requirements of this Rule is expected to be minimal.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett (202) 326–2453; FAX (202)–326–2447; E-mail: ecrockett@ftc.gov

Jay C. Shaffer,

Acting General Counsel.

[FR Doc. 97–19629 Filed 7–24–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

AHCPR Opportunity for Cooperative Research and Development Agreements and Other Public-Private Partnerships

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: The Agency for Health Care Policy and Research (AHCPR) is seeking specific expressions of interest and general public comments regarding the Agency's intention to develop additional public-private partnerships for research to enhance quality and access in the nation's health care system.

DATES: To receive immediate consideration, proposals or public comments must be received by September 23, 1997. However, proposals may be submitted at any time.

ADDRESSES: Proposals or comments may be sent directly to: Larry T. Patton, Director, Office of Policy Analysis, Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Rockville, Md 20852. (Email: 1patton@ahcpr.gov). Portions of proposals containing proprietary information may be labeled as confidential, if necessary.

FOR FURTHER INFORMATION CONTACT: Howard Cohen, J.D., at 301–594–1321, ext. 1016.

SUPPLEMENTARY INFORMATION: AHCPR is planning to enter into ''Cooperative Research and Development Agreements'' (CRADAs) and other public-private partnerships pursuant to the Federal Technology Transfer Act of 1986, as amended, and Executive Order 12591 of October 10, 1987, for collaboration on research projects as described below.

Background

AHCPR is the Federal agency charged with supporting research to enhance the quality, appropriateness, and effectiveness of health care services and access to those services. AHCPR supports the development of scientific knowledge and disseminates information to strengthen consumer and clinical decisionmaking, and to improve the organization of public and private systems of health care delivery. AHCPR also has the lead for the special initiative of the Secretary of Health and Human Services (HHS) on improving the quality of care throughout the nation's health systems.

AHCPR's strategic goals in research encompass projects designed to:

- Help consumers make more informed choices.
- Determine what works best in clinical practice.
- Measure and improve quality of care.
- Monitor and evaluate health care delivery.
- Improve the cost-effective use of health care resources.
- Assist health care policymakers.
- Build and sustain the health services research infrastructure.

AHCPR historically has used public-private partnerships to strengthen its dissemination activities, including the publication of clinical practice guidelines and co-sponsorship of conferences designed to expedite the translation of research findings into everyday health car practice. More recently, AHCPR has expanded its partnership roles with collaborations to support health services research projects through a variety of models, including the Cooperative Research and Development Agreement (CRADA).

AHCPR's interest in expanding its public-private partnerships is precipitated by three primary factors. First, demand for the products of health

services research is growing beyond the Agency's ability to support it alone. Second, the rapid changes in health care markets and delivery systems create a need to re-examine the assumptions underlying the organization and delivery systems of health care. Third, some of the relevant data required to support health services research on health care innovations currently reside in the private sector. AHCPR believes that additional collaborations with the private-sector will help to better target Federal resources, and ensure the relevance of AHCPR's research to the emerging needs of the health care delivery systems and the growing demand for information.

AHCPR is encouraging new public-private partnerships for collaborative research projects, with groups representing every segment of the health care community:

- Patients and consumers.
- Practitioners and organizations concerned with the delivery of clinical care.
- Health plans and related organizations.
- Purchasers of health care, including employers, labor unions, and other group purchasers.
- Producers of health care products and equipment, including research-based manufacturers of pharmaceuticals, medical devices, and biotechnology products.
- Researchers, policymakers, and research organizations.

AHCPR will permit CRADA partners to negotiate with the Agency for a patent license, or similar license, to use or market (and develop further) any inventions, intellectual property, or copyrightable material created or developed through the collaboration. Partners will be expected to provide resources to facilitate the collaboration, including funds to support the costs of the research. The typical term of a CRADA will range from 2 to 5 years.

Other Federal agencies, including the National Institutes of Health (NIH) and Health Care Financing Administration (HCFA) of the Department of Health and Human Services (DHHS), share AHCPR's interest in conducting research projects, as well as disseminating and utilizing the Agency's research results, frequently leading to joint support and technical collaborations. For example, HCFA, as a purchaser of health care services for Medicare and Medicaid beneficiaries, shares AHCPR's interest in the area of health care quality measurement and improvement. AHCPR and HCFA anticipate that it will often be effective and appropriate to cooperate in joint public-private partnerships for collaborative research endeavors. Responses proposing multi-agency action will receive a coordinated review.

AHCPR's Role in Partnerships

As a recognized leader in health services research, AHCPR has unique capabilities to bring to public-private partnership, including:

- Expertise in research methodology, including both quantitative and qualitative methods.
- Demonstrated objectivity and recognized excellence in research.
- Management of large national and state health care databases (including the Medical Expenditures Panel Surveys (MEPS), Health Care Cost and Utilization Project (HCUP), and HIV Cost and Services Utilization Study (HCSUS), as well as access to, and experience with, other major health-related national databases.
- Expertise in evaluating cost-effectiveness, medical outcomes, and appropriateness of different clinical approaches and technologies for specific diseases or treatment regimes.
- Expertise in working with policymakers and legislators to evaluate trends occurring in the health care market and to provide data to assist in decisionmaking.

Recent AHCPR partnerships with nongovernmental organizations, leading toward important research initiatives, include:

- Development of the Computerized Needs-Oriented Quality Measurement Evaluation System (CONQUEST), which enables health plans, practitioners, employers, and other users to identify and compare alternative quality of care measures in a meaningful way; and inauguration of the Quality Measurement Network (QMNet), which builds on the CONQUEST system and attempts to create a self-sufficient, comprehensive and publicly accessible quality measurement resource. These quality of care activities have involved AHCPR's working with private-sector lead organizations in health care quality improvement and measurement, academia, and others.
- Study of stroke prevention strategies in managed care organizations, particularly on ways to translate the findings of AHCPR's Patient Outcomes Research Team (PORT) into actual clinical practice across a variety of managed care models, using a three-way agreement involving AHCPR, PORT research institutions, and a major drug manufacturer.
- Support for HCSUS, an HIV-related research project employing a cooperative agreement between AHCPR and RAND, in which investigators look at the delivery and costs of HIV/AIDS treatment. A partnership stemming from the HCSUS project, with funding from major pharmaceutical firms and technical assistance from AHCPR and other research partners, is enabling RAND to examine factors associated with initiating and adhering to combination therapies, which include protease inhibitors, for HIV/AIDS.

AHCPR is now exploring new models for partnerships with other organizations. Areas for potential collaborations include, but are not limited to:

- How the structure and organization of health care markets and the evolving managed care systems impact on cost, quality, and access;
- Changes in the delivery of care such as clinical integration and new models of care, and how particular elements of managed care affect quality and outcomes;
- Changes in financing mechanisms for health care coverage, including the impact of employer coalitions and value-based purchasing efforts;
- Ways to use governmental and private sector health care databases for applying advanced data-analysis techniques to improve in health care delivery;

Examining primary care delivery in terms of cost, quality, and patient outcomes;

- The use of consumer satisfaction initiatives in the design of improved health care systems;
- Development of syntheses of scientific evidence on specific clinical topics and technologies;
- Disseminating evidence-based practice information to the clinical community;
- Evaluating the relative impact (in terms of cost, quality, and outcomes) of new medical technologies, interventions, and innovations; and
- Expanding efforts to explore and evaluate outcomes and effectiveness of various treatments for the same condition.

Partners' Role

The role of the private partner in these research collaborations could include opportunities to:

- Support research design and study through the provision of funding or other valuable research resources (such as data, research personnel, equipment).
- Partner in the design, coordination, and conduct of research studies to evaluate the effectiveness and cost of health care delivery.
- Provide clinical or other technical support to studies.

• Improve consumer and practitioner access to research results through innovations in dissemination and evaluation.

Dated: July 14, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–19064 Filed 7–24–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August, 1997:

Name: Subcommittee on Development and Implementation of the National Guideline Clearinghouse (NGC).

Date and Time: August 22, 1997, 8:30 a.m.–4:30 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the NGC that was published in the Commerce Business Daily on May 16, 1997.

The purpose of this contract is to complete the technical work to develop and implement a National Guideline Clearinghouse. The functions of the NGC will be four-fold: (1) Make widely available, through Internet access and HyperLink to other electronic access points, a comprehensive relational database of abstracts and, where possible, full-text clinical practice guidelines; (2) describe attributes of individual clinical practice guidelines contained within the database; (3) compare and contrast clinical practice guidelines on similar topics; and (4) make available other guideline-related material, including products from AHCPR-supported Evidence-based Practice Centers. The NGC is being developed jointly with the American Association of Health Plans and the American Medical Association.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, implementing regulations, 41 CFR section 101–6.1023, and procurement regulations, 48 CFR section 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Al Deal, Office of Management, Contracts Management Staff, Agency for Health Care Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 601, Rockville, Maryland 20852, 301/594–1445.

Dated: July 17, 1997.

John M. Eisenberg,

Adminstrator.

[FR Doc. 97–19609 Filed 7–24–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 2 p.m.–4 p.m., August 11, 1997; 2 p.m.–4 p.m., August 12, 1997.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Closed: 2 p.m.–4 p.m., August 11, 1997; Open: 2 p.m.–3:10 p.m., August 12, 1997; Closed: 3:10 p.m.–4 p.m., August 12, 1997.

Purpose: This committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance and mix of intramural and extramural research, including laboratory research, and provides guidance on intramural and extramural scientific program matters, both present and future, particularly from a long-range viewpoint. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters To Be Discussed: The meeting will convene in closed session from 2 p.m. to 4 p.m. on August 11, 1997. The purpose of this closed session is for the Science and Program Review Work Group to consider individual injury control research grant applications recommended for further consideration by the CDC Injury Research Grant Review Committee. On August 12, 1997, from 3:10 p.m. to 4 p.m., the meeting will convene in closed session in order for the full Committee to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) of title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

During the open portion of the meeting, the Committee will discuss (1) the status of the Institute of Medicine study on injury prevention and control; (2) the next meeting of the Advisory Committee on November 18, 1997, to be held in conjunction with the Safe America National Conference on Injury Prevention and Control, in Washington, D.C., on November 19–21; and (3) the development of the Safe America Partnership.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

Dated: July 21, 1997.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–19601 Filed 7–24–97; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Proposed Projects

Title: National Directory of New Hires.

OMB No.: New Request.

Description: Public Law 104–193, the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' requires the Office of Child Support Enforcement (OCSE) to develop a National Directory of New Hires (NDNH) to improve the ability of State child support agencies to locate noncustodial parent and collect child support across State lines.

This notice solicits comments under normal reports clearance procedures and supersedes a previous **Federal**

Register notice, published July 18, 1997, soliciting comments under emergency procedures of the Paperwork Reduction Act (PRA). Therefore, the reports clearance request submitted to OMB under emergency procedures of the PRA has been withdrawn. This action was taken to provide the normal 60-day public comment period considering the national significance of these data collections.

The NDNH will contain employment, wage and unemployment compensation data on all employers within the United States. Public Law 104–193 requires States and territories to periodically transmit new hire data received from employers to the NDNH, and to transmit wage and unemployment compensation claims data to the NDNH on a quarterly basis.

Employers must report specified information (based on the IRS W–4 Form) on all new hires to State agencies for transmittal to the NDNH. States will transmit all data to the NDNH electronically. The purpose of the NDNH is to develop a repository of information on newly-hired employees, and on the earnings and unemployment compensation claims data on all employees, to provide the necessary information to locate child support obligors, and to establish and enforce child support orders.

As planned, the approximately 6.3 million United States' employers will submit approximately 60 million new hire records to the State Directory of New Hires (SDNH). If reports are submitted manually, employers must submit new hire reports not later than 20 days after the date the employer hires the employee. If employers submit new hire reports electronically, reports must be submitted to the SDNH twice a month and not less than 12 days nor more than 16 days apart. The State shall have the option to set a civil money penalty for noncomplying employers.

The information will be entered into the data base maintained by the SDNH within five business days of receipt from an employer. Within three business days after the date information regarding a newly hired employee is entered into the SDNH, the information shall be furnished to the NDNH.

State agencies charged with the administration of the unemployment compensation program must submit to the NDNH approximately 140 million records quarterly. These State records contain the wages and unemployment compensation paid to individuals within the fifty States, Guam, Virgin Islands, Puerto Rico and the District of Columbia.

Provided below are the proposed Record Layouts and Field descriptions along with the Supplemental Specifications. The supplemental specifications contain additional explanation regarding format and content of items in the record specifications. The record Layouts and Field descriptions apply to the W–4, Quarterly Wage and Unemployment Compensation records respectively. Descriptions are also provided for header, data and trailer subrecords.

Respondents: States and Employers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
New Hire: Employers Not Currently Required to Report (manual reporting) [1].	[1] 3,372,250	[2] 3.484	.0417 hours (2.5 minutes)	489,930
New Hire: Employers Not Currently Required to Report (electronically) [1].	[1] 740,250	[2] 37,037	.00028 hours (1 second) [3]	7,677
New Hire: Multistate Employers' Registration Form	375,000	1	.050	18,750
New Hire: States Not Currently Requiring New Hire Reporting.	29	[4] 83,333	[5] 266,668	644,445
New Hire: States Currently Requiring New Hire Reporting.	25	[4] 83.333	[6] 70.741	147,376
Quarterly Wage and Unemployment Compensation	54	[7] 4	.033	7.13

Estimated Total Annual Burden Hours: 1,308,185

Footnotes

The above Burden Estimates are based on the Following Assumptions and Factors:

Twenty-five States already had a new hire reporting system in place before PRWORA was passed. Within those 25 States, on average, it is estimated that 75% of employers already report new hire data (based on the fact that some States require all employers to report, some require only targeted industries to report, and some are voluntary reporting programs). It is estimated that these employers represent the same proportional number of new hire reports (75% of 25/54).

These estimates include the 25% remaining employers who do not report within those 25 States, in addition to all of the employers within the remaining 29 States.

[1] Eighteen percent of all employers will report manually and 82% will report electronically (based on SSA's experience). The number of employers is based on the following calculation: the total number of employers (6,300,000) multiplied by 29/54 (the proportion of States that do not have new hire programs) plus the total number of employers multiplied by the number of employers not already reporting in the States that do have new hire programs (25% of 25/54). The result (4,122,500) is then broken down into two categories: those who report manually and those who report electronically.

[2] For the ''Employers'' tiers, ''response'' is defined as the number of new hire reports. Thirty percent of all new hire reports will be reported manually and 70% will be reported electronically (based on SSA's experience).

[3] Based on the assumption that employers reporting new hires electronically will most likely transmit their reports in a batch file, thus significantly reducing the per-response burden.

[4] For the ''States'' tiers, ''response'' is defined as the number of transmissions to the NDNH. All States are required by law to transmit new hire data to the NDNH electronically, within three business days after entering the data into the SDNH. There are 250 business days per year. States will send a transmission once every three business days, which is equal to 83.333 transmissions per year.

[5] Based on the average number of reports per transmission and the average burden per new hire report. The average number of reports per transmission is calculated by dividing 32,222,220 (total number of new hire reports in those 29 States) by 29 (number of States). The result (1,111,111) is then divided by 83.333 (estimated number of transmissions per State, see above explanation). Based on this calculation, the average number of reports per transmission is 13,333.39 reports. The average burden per new hire report is estimated to be .02 hours (1.2 minutes), which is based on a range of two seconds to four minutes. The burden is estimated to be two seconds per report for the 70% of new hire reports submitted to the State electronically. This two second burden estimate is based on the same batch-file

assumption as above, and includes data receipt and data transmission. If the State has to manually enter the new hire data before transmitting to the NDNH (which is the case for 30% of all new hire reports), the burden is estimated to be four minutes (based on the number of characters in a record). The average burden hours per report (.02) multiplied by the average number of reports per transmission (13,333.39) is equal to the average burden hours per transmission (266.668).

[6] Within the 25 States that already have a new hire reporting program in place, the burden is broken down into three categories. The total number of new hire reports for those 25 States is 27.8 million (46% of 60 million, or 25/54 times 60 million). Seventy-five percent of employers already submit to those States, so the incremental burden for that group is only the transmission to the NDNH (1 second per report). Twenty-five percent of employers do not already submit to those States, so the burden for that group is based on the same calculation as above: 30% of all new hire reports are reported manually (@ 4 minutes each) and 70% are reported electronically (@ 2 seconds each). The following table represents the exact formula for the calculation:

Types of reports	Number of new hire reports	Time per new hire report	Total time
Already Received From Employers (75%)	20,833,333	.000278 hours (1 second)	5787.0370 hours.
Reports Not Currently Received (25%)—Manual (30%)	2,083,333	.066667 hours (4 minutes)	138888.8889 hours.
Reports Not Currently Received (25%)—Electronic (70%)	4,861,111	.000556 hours (2 seconds)	2700.6173 hours.

Total time for all three types of reports: 147,376.543 hours.

Total time per transmission (83.333) per State (25): 70.741 hours.

[7] ''Response'' is defined here as the number of transmissions to the NDNH. States are required to transmit quarterly wage and unemployment compensation data four times a year.

Detailed Input Information

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)

Field name	Location/ position	Length	Alpha/ numeric	Description/ remarks	Mandatory/ optional
W4 Transmitter Record					
Record Identifier	1–2	2	A/N	'H4'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only)	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.
Transmission Type	14–15	2	A/N	'W4' for W4 data	M.
Department of Defense Code	16	1	A	'A' for active duty, 'C' for civilian, 'R' for reserves. States may leave this field blank.	M for DOD.
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE	M.
Date Stamp	19–26	8	N	Format—YYYYMMDD. Must be current system date of file generation..	M.
Batch Number	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	33–801	769	A/N	Spaces. To be used for future versions.	
W4 Total Record					
Record Identifier	1–2	2	A/N	'T4'	M.
Data Record Count	3–13	11	N	Total record count for transmission, including header and trailer records.	M.
Filler	14–801	787	A/N	Spaces. To be used for future versions.	
W4 Data Record					
Record Identifier	1–2	2	A/N	'W4'	M.
Employee SSN	3–11	9	N	As reported by employee	M.
Employee Name:					
First Name	12–27	16	A	At least one character. No special characters.	M.
Middle Name	28–43	16	A	If non-blank, must be at least one character. No special characters..	O.
Last Name	44–73	30	A	At least one character. No special characters, except for hyphen..	M.
Employee Address:					
Street Address (line 1)	74–113	40	A/N	Non-blank	M.
Street Address (line 2)	114–153	40	A/N	If your address line is less than 40 characters do not concatenate into one line.	O.
Street Address (line 3)	154–193	40	A/N		O.
City	194–218	25	A	At least two characters. No special characters, except for hyphen..	M.
State	219–220	2	A	Valid state or territory abbreviation	M.
Zip Code (1)	221–225	5	N	Must be numeric	M.
Zip Code (2)	226–229	4	A/N	If present, must be numeric	O.
Employee Foreign Address:					

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/ position	Length	Alpha/ numeric	Description/ remarks	Mandatory/ optional
Foreign Country Code	230–231	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	232–256	25	A/N	If present, at least two characters	O.
Foreign Zip Code	257–271	15	A/N		O.
Employee Date of Birth	272–279	8	A/N	If present, numeric. Format—YYYYMMDD	O.
Employee Date of Hire	280–287	R	A/N	If present, numeric. Format-YYYYMMDD	O.
Employee State of Hire	288–289	2	A	Alphabetic state of territory abbreviation	O.
Federal EIN	290–298	9	N	Federal Employer Identification Number	M.
State EIN	299–310	12	A/N	If no FEIN is available, send the State EIN. If present and less than 12 characters, left justify.	O.
Employer Name	311–355	45	A/N	At least two characters..	
Employee Address:					
Street Address (line 1)	356–395	40	A/N	FEIN address from W4. At least two characters.	M.
Street Address (line 2)	396–435	40	A/N	If your address line is less than 40 characters, do not concatenate into one line.	O.
Street line 3)	436–475	40	A/N		O.
City	476–500	25	A	At least two characters	M.
State	501–502	2	A	Valid state of territory abbreviation	M.
Zip Code (1)	503–507	5	N	Must be numeric	M.
Zip Code (2)	508–511	4	A/N	If present, must be numeric	O.
Employer Foreign Address:					
Foreign Country Code	512–513	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	514–538	25	A/N	If present, at least two characters	O.
Foreign Zip Code	539–553	15	A/N		O.
Employer Optional Address				This address will be blank if only collecting one address. If there is a second address, it should be the address where child support orders should be sent.	O.
Street Address (line 1)	554–593	40	A/N	If your address line is less than 40 characters, do not concatenate into one line.	O.
Street Address (line 2)	594–633	40	A/N		O.
Street Address (line 3)	634–673	40	A/N		O.
City	674–698	25	A	If present, at least two characters	O.
State	699–700	2	A	If present, valid state of territory abbreiation	O.
Zip Code (1)	701–705	5	A/N	If present, must be numeric	O.
Zip Code (2)	706–709	4	A/N	If present, must be numeric	O.
Employer Optional:					
Foreign Address:					
Foreign Country Code	710–711	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	O.
Foreign Country Name	712–736	25	A/N	If present, at least two characters	O.
Foreign Zip Code	737–751	15	A/N		O.
Filler	752–801	50	A/N	Spaces. To be used for future versions.	
Quarterly Wage Transmitter Record					
Record Identifier	1–2	2	A	'HQ'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only)	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.
Transmission Type	14–15	2	A/N	'QW' for quarterly wage data	M.
Department of Defense Code	16	1	A	'A' for active duty, 'C' for civilian, 'R' for reserves. States may leave this field blank.	M for DOD.
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE	M.
Date Stamp	19–26	8	N	Format—YYYYMMDD. Must be current system date of file generation..	M.
Batch Number	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	33–601	569	A/N	Spaces. To be used for future versions.	

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/ position	Length	Alpha/ numeric	Description/ remarks	Mandatory/ optional
Quarterly Wage Total Record					
Record Identifier	1–2	2	A	'TQ'	M.
Data Record Count	3–13	11	N	Total record count for transmission, including header and trailer record.	M.
Filler	14–601	588	A/N	Spaces. To be used for future versions.	
Quarterly Wage Data Record					
Record Identifier	1–2	2	A	'QW'	M.
Employee SSN	3–11	9	N	As reported by employee	M.
Employee Name:					
First Name	12–27	16	A	At least one character. No special characters	M.
Middle Name	28–43	16	A	If non-blank, must be at least one character. No special characters.	O.
Last Name	44–73	30	A	At least one character. No special characters, except for hyphen.	M.
Employee Wage Amount	74–84	11	N	Last two positions are decimal places. No negative values, zeroes are allowed. Gross amount paid within the quarter.	M.
Reporting Period	85–89	5	N	Format—QYYYY for Calendar year. Q = 1 for Jan–Mar, Q = 2 for Apr–Jun, Q = 3 for Jul–Sep, Q = 4 for Oct–Dec..	M.
Federal EIN	90–98	9	N	Federal Employer Identification	M.
State EIN	99–110	12	A/N	If present and less than 12 characters, left justify.	O.
Employer Name	111–155	45	A/N	At least two characters	M.
Employer Address:					
Street Address (line 1)	156–195	40	A/N	FEIN address. At least two characters	M.
Street Address (line 2)	196–235	40	A/N	If your address line is less than 40 characters, do not concatenate into one line.	O.
Street Address (line 3)	236–275	40	A/N		O.
City	276–300	25	A	At least two characters	M.
State	301–302	2	A	Valid state or territory abbreviation	M.
Zip Code (1)	303–307	5	N		M.
Zip Code (2)	308–311	4	A/N	If present, must be numeric	O.
Employer Foreign Address:					
Foreign Country Code	312–313	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	M for foreign address.
Foreign Country Name	314–338	25	A/N	If present, at least two characters	0.
Foreign Zip Code	339–353	15	A/N		0.
Employer Optional Address				This address will be blank if only collecting one address. If there is a second address, it should be the address where child support orders should be sent.	
Street Address (line 1)	354–393	40	A/N	At least two characters	0.
Street Address (line 2)	394–433	40	A/N	If your address is less than 40 characters, do not concatenate into one line.	0.
Street Address (line 3)	434–473	40	A/N		0.
City	474–498	25	A	If present, at least two characters	0.
State	499–500	2	A	If present, valid state or territory abbreviation	0.
Zip Code (1)	501–505	5	A/N	If present, must be numeric	0.
Zip Code (2)	506–509	4	A/N	If present, must be numeric	0.
Employer Optional Foreign Address:					
Foreign Country Code	510–511	2	A/N	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).	0.
Foreign Country Name	512–536	25	A/N	If present, at least two characters	0.
Foreign Zip Code	537–551	15	A/N		0.
Filler	552–601	50	A/N	Spaces. To be used for future versions.	
UI Transmitter Record					
Record Identifier	1–2	2	A	'HU'	M.
Transmitter State Code	3–4	2	N	State FIPS code (for states only)	M for states.
Transmitter Agency Code	5–13	9	A/N	Federal Agency Code (for federal agencies only).	M for agencies.

RECORD LAYOUTS AND FIELD DESCRIPTIONS FOR INPUT TO THE NATIONAL DIRECTORY OF NEW HIRE (NDNH)—Continued

Field name	Location/ position	Length	Alpha/ numeric	Description/ remarks	Mandatory/ optional
Transmission Type	14–15	2	A/N	'UI' for unemployment insurance data	M.
Filler	16	1	A/N		M for DOD.
Version Control Number	17–18	2	A/N	Must be '01', controlled by OCSE	M.
Date Stamp	19–26	8	N	Format—YYYYMMDD. Must be current system date of file generation.	M.
Batch Number	27–32	6	N	Sequential number to identify a submission as unique.	M.
Filler	32–295	263	A/N	Spaces. To be used for future versions.	
UI Total Record					
Record Identifier	1–2	2	A	'TU'	M.
Data Record Count	3–13	11	N	Total record count for transmission, including header and trailer record.	M.
Filler	14–295	282	A/N	Spaces. To be used for future versions.	
UI Data Record					
Record Identifier	1–2	2	A	'UI'	M.
Claimant SSN	3–11	9	N	As reported by claimant	M.
Claimant Name:					
First Name	12–27	16	A	At least one character. No special characters	M.
Middle Name	28–43	16	A	If non-blank, must be at least one character. No special characters.	0.
Last Name	44–73	30	A	At least one character. No special characters, except for hyphen.	M.
Claimant Address:					
Street Address (line 1)	74–113	40	A/N	Non-blank	M.
Street Address (line 2)	114–153	40	A/N	If your address line is less than 40 characters, do not concatenate into one line.	0.
Street Address (line 3)	154–193	40	A/N		0.
City	194–218	25	A	At least two characters. No special characters, except for hyphen.	M.
State	219–220	2	A	Valid state or territory abbreviation	M.
Zip Code (1)	221–225	5	N	Must be numeric	M.
Zip Code (2)	226–229	4	A/N	If present, must be numeric	0.
Benefit Amount	230–240	11	N	Last two positions are decimal places. No negative values, zeroes are allowed. Gross amount paid within the quarter before withholding offsets. This amount is a total of all benefits that are tracked electronically.	M.
Reporting Period	241–245	5	N	Format—QYYYY for Calendar year. Q=1 for Jan–Mar, Q=2 for Apr–Jun, Q=3 for Jul–Sep, Q=4 for Oct–Dec.	M.
Filler	246–295	50	A/N	Spaces. To be used for future versions.	

Supplement to New Hire Record Specifications

At the suggestion of the workgroup that assisted in developing the record specifications for the National Directory of New Hires (NDNH), this is an accompanying document that contains some additional clarification or explanation of items in the record specifications.

Mandatory Fields: The legislation mandates the collection of only the following six data elements from the W–4 form:
Employee SSN
Employee Name
Employee Address
Employer Name
Employer Address
Employer ID number

On the W–4 record specifications these fields are marked with (M) to designate mandatory. There are three additional optional fields that are highly desirable for the New Hire data base. These are:

Employee Date of Birth
Employee Date of Hire
Employee State of Hire

While the legislation precludes the federal government from mandating the collection and retention of additional data elements, the states are not bound by those rules. The New Hire record specifications were developed in collaboration with State child support enforcement staff, State Employment Security Agency (SESA) staff, and federal and Department of Defense staff. Consequently, the specifications include additional data elements that will be collected by the states and passed to the NDNH. These data elements will be used by the states and other authorized users of NDNH data.

Following are some clarifying statements that apply to all of the NDNH data elements and record formats.

1. All data is to be in EBCDIC format.

2. All alphanumeric data are to be in upper case.

3. All alphanumeric data are to be left justified.

4. All numeric data are to be right justified and zero filled.

5. All dates are to be in the Year 2000-compliant format of YYYYMMDD.

6. Name and city data are to be stripped of special characters except for the hyphen.

7. State and territory abbreviations in addresses should be the U.S. Postal Service abbreviations

8. Name fields should not include suffixes such as ''Jr.'', ''Sr.'', and ''III''.

9. The NDNH will contain two addresses for the employer. The first address is that noted on the W–4 form. The second address is where child support orders should be sent. If only one address is available or known, use the first set of address data elements and leave the second set of data elements blank.

10. National standard codes are to be used for foreign country code abbreviations as assigned by the Department of Commerce FIPS codes (FIPS PUB 10–4).

11. For Quarterly Wage data, the employee wage amount is to be the gross amount paid during the quarter, regardless of when the amount was earned.

12. For Unemployment Insurance data, the benefit amount is to be the gross amount paid within the quarter before any deductions or offsets are applied, regardless of when the benefit was earned or accrued.

13. When in Doubt, Send the Data. While the NDNH wants to receive clean, edited data, we want to receive all data in a timely manner. Consequently, if some data is missing or incomplete at the time of transmission include the record(s) in the transmission. Hopefully, this will also make processing easier at the State level.

14. Output records returned from the NDNH will contain all of the input data sent to the NDNH and indications of errors of changes that took place at the federal level.

15. States have the option of receiving error records. The NDNH will maintain a matrix of which states want to be notified of errors and which do not.

Input Records

When sending data to the federal level, there will be three record types in each transmission of data. These will include a header record, a series of data records, and concluded by a trailer record.

Header Record

The header record will be the first record in the data set and will contain the following fields.

Field name	Comments
Record Identifier	Enter 'H4' for W4 data. Enter 'HQ' for Quarterly Wage data. Enter 'HU' for Unemployment Insurance data.
Transmitter State Code	Refer to U.S. Department of Commerce FIPS code manual, National Institute of Standards and Technology, FIPS PUB 10–4 (April 1995).
Transmitter Agency Code	Some federal agencies act as service bureaus for other federal agencies. Enter the Federal Employer Identification Number (FEIN) of the agency transmitting the data to the National Directory of New Hires.
Transmission Type	Identifies the type of data in this data set. Enter 'W4' for W4 data. Enter 'QW' for Quarterly Wage data. Enter 'UI' for Unemployment Insurance data.
Department of Defense Code.	This field is mandatory only for DOD data transmissions. All others can ignore this field. DOD data is separated into several categories. This field indicates which category of data is being transmitted. Enter 'A' for active duty personnel. Enter 'C' for civilian personnel. Enter 'R' for reservist personnel.
Version Control Number	It is assumed that the system will be modified over time to accommodate future requirements. The version Control Number indicates which version of the system is in operation and will provide a means of communicating with data suppliers about record formats. Enter '01' until notified by OCSE to change this value.
Date Stamp	Enter the system generated date on the date the data set is transmitted to the federal level. Enter the date in the format YYYYMMDD.
Batch Number	A sequential number generated by the transmitting agency. This field is to uniquely identify a transmission. Do not repeat batch numbers.
Filler	Each record contains filler to be used for future versions of the record formats.

Total Record

Each data set is to be terminated with a Total Record which will contain the count of the total number of records transmitted in this data set.

Field Name	Comments
Record Identifier	Enter 'T4' for W4 data. Enter 'TQ' for Quarterly Wage data. Enter 'TU' for Unemployment Insurance data.
Data Record Count	Enter the total number of records transmitted in this data set, including the header and trailer records. This will be used to verify that all records are received and processed.
Filler	Spaces. To be used for future versions of the system.

Data Record

Each of the data records for W4, Quarterly Wage, and UI is different in several ways. Following is further explanation of some of the data elements in those record layouts. See the Record Layout specifications for detailed information on all data elements.

Filed Name	Comments
Record Identifier	Enter 'W4' for the W4 record. Enter 'QW' for the Quarterly Wage record. Enter 'UI' for the Unemployment Insurance record.
Foreign Address Data Elements.	If an address supplied for the employee or employer is outside the United States, include the Foreign Country Code for the address, the Foreign Country Name, and the Foreign Zip Code.
Employee Wage Amount (QW).	For Quarterly Wage data, provide the gross amount paid to the employee during the quarter, regardless of when the amount was earned.
Reporting Period	Use the quarters that correspond to the calendar year rather than quarters that correspond to fiscal accounting periods. Use the format QYYYY where Q=1 for January–March. Q=2 for April–June. Q=3 for July–September. Q=4 for October–December.
Benefit Amount (UI)	The UI Benefit Amount is the gross amount paid within the reporting quarter before any withholding offsets are applied. This amount should be the sum of benefits received from all programs tracked electronically by the State. However, only include those benefits that are housed in the same hardware environment. Do not include benefits from sources that must be translated or imported to the mainframe environment.

Output Records

FPLS will return records to the data transmitters when errors were detected. The states can elect to have these records returned for error resolution or not as they choose. Federal agencies, however, will receive all error records from each transmittal.

The record formats for the error records are identical to the input record provided by the submitter except that error codes will be appended that explain the nature of the error. Errors can occur at the transmission level and at the individual record level.

Transmission Control Records

This is the output equivalent of the input TRANSMITTER RECORD and includes counts of records received, records rejected, error records returned, records posted to the National Directory of New Hires, records posted to the Suspense File, and up to five Error Codes pertaining to the transmission level error conditions encountered.

Data Records

Each output version of the input DATA RECORD had appended to it up to five record level error codes that indicate the nature of the error encountered during editing. It also contains a Social Security Number Verification Indicator that indicates whether multiple valid SSNs were encountered during the SSN verification process. In addition, a corrected SSN is returned if during the SSN verification process the supplied SSN was determined to be incorrect and the verification procedure was able to provide the correct SSN.

Total Records

No transmission total records will be returned to the submitting State or federal agency.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Service, Attn: ACF Reports Clearance Officer, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447 or e-mail to Internet address: rdriscoll@acf.dhhs.gov. All requests should be identified by the title of the information collection.

Dated: July 18, 1997.

Robert Driscoll,

Reports Clearance Officer.

[FR Doc. 97–19494 Filed 7–24–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0282]

General Principles of Software Validation; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''General Principles of Software Validation.'' This guidance is applicable to medical device software and to software used to design, develop, or manufacture medical devices. This guidance discusses how the general provisions of the Quality System Regulation apply to software and the agency's current approach to evaluating a software validation system.

DATES: Written comments by October 1, 1997.

ADDRESSES: Submit written requests for single copies of ''General Principles of Software Validation'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0806 (outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on ''General Principles of Software Validation'' to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of ''General Principles of Software Validation'' and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: E. Stewart Crumpler, Center for Devices and Radiological Health (HFZ–343), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4659.

SUPPLEMENTARY INFORMATION: This guidance outlines general validation principles that FDA considers to be applicable to the validation of medical device software or the validation of software used to design, develop, or manufacture medical devices. This guidance discusses how the general provisions of the Quality System Regulation apply to software and the agency's current approach to evaluating a software validation system. For example, this guidance lists validation elements which are acceptable to FDA for the validation of software, however, it does not list all of the activities and tasks that must in all instances, be used to comply with the law. An alternative approach may be used if such approach satisfies applicable statutory and regulatory requirements.

This guidance does not recommend any specific life cycle model or any specific validation technique or method, but does recommend that software validation activities be conducted throughout the entire software life cycle. For each software project, the responsible party should determine and justify the level of validation effort to be applied, and the specific combination of validation techniques to be used.

The guidance in this document is based on generally recognized software validation processes and could therefore be applicable to any software. For FDA purposes, this guidance is applicable to any regulated medical device related software as defined by the Federal Food, Drug, and Cosmetic Act or by current FDA software and regulatory policy. It is not the intent of this document to determine or identify specifically which software is or is not regulated.

This guidance represents the agency's current thinking on general principles of software validation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before October 1, 1997, submit to the Dockets Management Branch (address above) written comments on ''General Principles of Software Validation.'' Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. ''General Principles of Software Validation'' and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain the new draft guidance via the World Wide Web (WWW) at ''http://www.fda.gov/cdrh/comp/swareval.html''. The new draft guidance may also be obtained by calling the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a fax machine with a touch-tone telephone attached or built in. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and enter Shelf number 938 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Dated: July 15, 1997.

Elizabeth D. Jacobson,

Deputy Director for Science, Center for Devices and Radiological Health.

[FR Doc. 97–19611 Filed 7–24–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

National Household Survey on Drug Abuse: ACASI Field Test 2—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a field test in October–December, 1997, to examine alternative designs for an Audio Computer Assisted Self-Interview (ACASI) version of the National Household Survey on Drug Abuse (NHSDA) questionnaire. The experimental design will compare variations in skip patterns, automatic internal consistency checks, number of chances to report use of substance. The basic questionnaire content will be identical to the 1997 NHSDA questionnaire. Approximately 2,300 interviews will be conducted with persons age 12 and older. A standardized set of respondent debriefing questions will be administered to the field test sample and to 750 respondents to the ongoing 1997 NHSDA. The estimated response burden for the field test is shown below:

	No.of respondents	Responses per respondent	Hours per response	Total burden hours
Electronic Household Screener	16,179	1	0.05	809
Electronic Questionaire, Debriefing and Verification Form	2,256	1	0.92	2,076
Screening Verification	485	1	0.067	33
Interview Verification	338	1	0.067	23
Debriefing Questions for 1997 NHSDA Respondents	750	1	0.12	90
Total				3,031

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: June 16, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–19604 Filed 7–24–97; 8:45 am]

BILLING CODE BILLING CODE: 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 25, 1997.

FOR FURTHER INFORMATION CONTACT. Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (there telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property the HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 17, 1997.

Fred Karnas, Jr.,

Acting Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–19581 Filed 7–24–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4196–N–04]

Combined Notices of Funding Availability for FY 1997 for the Public and Indian Housing Economic Development and Supportive Services Program and the Tenant Opportunities Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA); clarification.

SUMMARY: This notice reaffirms a requirement set forth in the Fiscal Year (FY) 1997 NOFA for the Tenant Opportunities Program (TOP), published in the **Federal Register** on June 6, 1997 (62 FR 31272). Specifically, this notice reminds Intermediary Resident Organizations that they must provide letters of support from all Resident Associations they propose to assist as part of their applications. Although this requirement was set forth in the June 6, 1997 NOFA, it was inadvertently omitted from the TOP Application Kit.

DATES: This original deadline date is not changed. Applications must be received on or before August 13, 1997, at the correct local HUD Field Office or Area Office of Native American Programs (AONAP) having jurisdiction over the applicant by 3 p.m. (local time).

FOR FURTHER INFORMATION CONTACT: *For Public Housing:* Office of Resident Involvement, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W. Washington, DC 20410; telephone number, (202) 708–3611 (This is not a toll-free number).

For Indian Housing: Tracy Outlaw, National ONAP, 1999 Broadway, Suite 3390, Denver, CO 80302; telephone number, (303) 675–1600 (This is not a toll-free number).

Hearing or speech-impaired persons may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 6, 1997 (62 FR 31272), HUD published a combined NOFA for the Public and Indian Housing Economic Development and Supportive Services Program and the Tenant Opportunities Program (TOP). The June 6, 1997 NOFA required that Intermediary Resident Organizations applying for TOP funds must provide letters of support from all Resident Associations they propose to assist as part of their applications. Specifically, section VII(g)(10) of the NOFA provided that ''[a]pplicants which are Intermediary Resident Organizations * * * must provide letters of support from each [Resident Association] identified in the application'' (62 FR 31287).

Section III of the June 6, 1997 NOFA directed applicants to complete their applications in accordance with further guidance to be provided in an Application Kit (See 62 FR 31274). The Application Kit was printed following publication of the June 6, 1997 NOFA publication and has been widely distributed. In providing application formats, the Application Kit was designed to reflect NOFA requirements. The June 6, 1997 NOFA is also included as an attachment to the Application Kit.

HUD is concerned that, except for including the June 6, 1997 NOFA as an attachment, the Application Kit otherwise does not reference the requirement that Intermediary Resident Organizations provide letters of support from all Resident Associations to be assisted by TOP grant funds. Notwithstanding this omission, the June 6, 1997 NOFA is clear in requiring such letters. This requirement, like other threshold requirements listed in section VII(g) of the June 6,1997 NOFA, must be satisfied in order for an application from an Intermediary Resident Organization to be complete and acceptable for rating and ranking.

Dated: July 17, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–19582 Filed 7–24–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–01–24 1A]

Extension of Currently Approved Information Collection

OMB Approval Number 1004–0073

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposed renewal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On April 14, 1997, the BLM published a notice in the **Federal Register** (62 FR 11842) requesting comments on the collection. The comment period ended

June 13, 1997. No comments were received.

Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Any further comments and suggestions as regards the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Desk Officer, for the Interior Department (1004–0073), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0073), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Coal Management (43 CFR 3400).

OMB Approval Number: 1004–0073.

Abstract: Respondents supply information which will be used to determine procedures for the leasing of coal. The information supplied allows the Bureau of Land Management to determine that operations are conducted in a manner consistent with the regulations and environmental requirements in accordance with the National Environmental Policy Act of 1969, as amended.

Form Numbers: 3400–12, 3440–1.

Frequency: On occasion.

Description of Respondents: Those seeking to lease coal.

Estimated Completion Times:

Type of application	Number of responses	Hours/ response	Total hours
Exploration License	10	30	300
Coal & Resource Information	5	3	15
Surface Owner Consultation	50	1	50
Exp. of Leasing Interest	5	6.6	32
Notice of Sale	20	3	60
Leasing on Application	2	150	300
Surface Owner Consent	10	10	100
PRLA	2	150	300
Lease Modification	10	35	350
License to Mine	2	5	10
Lease Transfer (incl assignments)	30	10	300
Sp. Leasing Qual.	10	4	40
Bonding Requirements	10	40	400
Lease Form	5	1	5
Exploration Plans	50	59	2,950
Res. Rec. and Protection Plans	30	174.8	5,245
Mining Plans	10	457.5	4,575
Changes in Plans	100	29.5	2,950
Mining Operations Maps	650	11.30	7,350
Pref. Standards for Exploration	90	1.75	158
Unexpected Wells	10	1	10
Exploration Reports	50	7.5	375
Royalty and Rental Reductions	10	150	1,500
Suspensions	10	14.4	144
Corr. Repts. for Noncompliance	90	3.75	338
LMU Applications/Requirements	10	32	320
Totals	1,281	.....	29,377

BLM estimates that it will take an average of nineteen hours to complete the applications, petitions, offers and statements required. The applicants will have access to records, plats and maps necessary for providing legal land descriptions. The type of information necessary is outlined in the regulations and is already maintained by the respondents for their own record keeping purposes and needs only to be complied in a reasonable format. The estimate also includes the time required for assembling the information, as well as the time of clerical personnel if needed. BLM estimates that approximately 1,281 filings will be made annually for a total of 29,377 reporting hours.

Annual Responses: 1281.

Annual Burden Hours: 29,377.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: July 17, 1997.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 97–19593 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–036–97–1060–00]

Environmental Statements; Notice of Intent: Lander Resource Area, WY; Capture Plan for Gathering Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of schedule change.

SUMMARY: The Lander Resource Area will extend the gather period for Wild Horses originally described on page 31619 of the **Federal Register**, Vol. 62, No. 111, Tuesday, June 10, 1997. Due to scheduling conflicts, the planned gathering period will now be from July 15, 1997, through December 31, 1997.

DATES: July 15, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, (307) 332–8400.

Jack Kelly,

Area Manager.

[FR Doc. 97–19602 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 30005]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 387.50 acres of National Forest System land to protect an area of Arizona Hedgehog Cactus. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting should be received on or before October 23, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, BLM, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM, Arizona State Office, 602–417–9437.

SUPPLEMENTARY INFORMATION: On November 22, 1996, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 1 S., R. 13 E.,
- Sec. 12, N½NE¼NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, E½SE¼SE¼NE¼, E½E½NE¼SE¼, and NE¼NE¼SE¼SE¼;
- Sec. 13, S½N½NE¼NE¼, S½NE¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, S½SE¼SE¼NE¼, and SE¼SW¼SE¼NE¼.

T. 1 S., R. 14 E.,
- Sec. 7, S½N½N½ of lot 2, S½N½ of lot 2, S½ of lot 2, lot 3, SW¼SE¼NW¼, S½NW¼SE¼NW¼, W½E½SW¼, S½N½NW¼SE¼NW¼, lot 5, E½W½SW¼SW¼, and E½SW¼SW¼, except MS 4036B;
- Sec. 18, lots 1 and 2, and E½NW¼, except a portion of MS 2337.

The area described contains 387.50 acres in Gila and Pinal Counties.

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 Arizona State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 18, 1997.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 97–19618 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1430–01; NMNM 98057]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 3,632.31 acres of Federal lands, 1,148.19 acres of federally reserved minerals and 640 acres of non-Federal lands, if acquired, in Taos County to protect the cultural, wildlife and scenic values of the Copper Hill area. This notice closes the Federal land to surface entry and mining and the federally owned minerals to mining, but not to mineral leasing for up to 2 years. The non-Federal land would also be closed to surface entry and mining if acquired by the United States during the 2-year period.

DATE: Comments and requests for a public meeting must be received by October 23, 1997.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road N.E., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Hal Knox, BLM, Taos Resource Area Office, (505) 758–8851.

SUPPLEMENTARY INFORMATION: On July 16, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Federal Lands

T. 23 N., R. 10 E.,
- Sec. 12, E½E½SE¼SE¼;
- Sec. 13, E½E½E½E½;
- Sec. 24, E½E½E½E½;
- Sec. 25, E½NE¼NE¼NE¼ and NE¼SE¼NE¼NE¼.

T. 23 N., R. 11 E.,
- Sec. 7, E½NE¼NE¼SE¼, S½N½N½S½, S½N½S½, and S½S½;
- Sec. 8, S½;
- Sec. 9, S½S½S½N½ and S½;
- Sec. 15, lots 7, 8, and SW¼;
- Sec. 18, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
- Sec. 19, lot 1, NW¼NE¼, S½NE¼, NW¼, and S½;
- Sec. 20, lots 1, 2, 3, inclusive, NE¼, N½S½, and N½S½S½;

Sec. 21, S½NE¼;
Sec. 22, lots 5 thru 8, inclusive, and W½;
Sec, 28, N½N½N½;
Sec. 30, N½N½N½.

The area described contains 3,632.31 acres in Taos County.

Federal Minerals

T. 23 N., R. 11 E.,
Sec. 17, lots 1 and 2, N½, N½SW¼, and SE¼;
Sec. 21, N½NE¼, W½, and SE¼.

The areas described aggregate 1,148.19 acres in Taos County.

Non-Federal Lands

T. 23 N., R. 11 E.,
Sec. 16, all.

The area described contains 640 acres in Taos County.

The purpose of the proposed withdrawal is to protect the cultural, wildlife and scenic values of the Copper Hill area. 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 Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: July 21, 1997.

Michael R. Ford,

District Manager.

[FR Doc. 97–19600 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–125–1430–01; OR 46140]

Termination of Recreation and Public Purposes Classification; Oregon

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice terminates R&PP Classification OR 46140. The termination of this classification is for record-clearing purposes. The subject lands will remain segregated under the general mining laws, due to an overlapping protective withdrawal, but will be open to mineral leasing and to surface entry except to the agricultural land laws.

EFFECTIVE DATE: Termination of the classification is effective July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Petterson, Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459, (541) 756–0100.

Protection District filed an application with BLM for an emergency operations and community center pursuant to the R&PP Act. On April 22, 1991, the lands requested were classified suitable for lease under the act. The center was not constructed and the applicant withdrew the application by letter dated June 4, 1997. Pursuant to the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), the regulation contained in 43 CFR 2091.7–1, and the authority delegated by Appendix 1 of the Bureau of Land Management Manual 1203, R&PP Classification OR 46140 is hereby terminated in its entirety for the following described land:

Willamette Meridian, Oregon

T. 26 S., R. 14 W.,
Sec. 3 portion of SE¼NE¼
Containing .30 acres, more or less.

Dated: July 18, 1997.

Lillie Hikida,

Acting District Manager, Coos Bay District.

[FR Doc. 97–19591 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Information Collection—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Land and Water Conservation Fund State Assistance and Urban Park and Recreation Recovery Programs.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on eight proposed information collection requests (ICR) for the Land and Water Conservation Fund (LWCF) and Urban Park and Recreation Recovery (UPARR) grant programs. Comments are invited on the following:

1. LWCF Description and Notification (DNF) Form. The DNF is necessary to provide data input into the NPS automated project information system which provides timely data on projects funded over the life of the LWCF program.

2. LWCF Program Performance Report. As required by OMB Circular A–102, grantees must submit performance reports which describe the status of the work required under the project scope.

3. LWCF Project Agreement and Amendment Form. The Project Agreement and Amendment forms set forth the obligations assumed by the State through its acceptance of Federal assistance under the LWCF Act and any special terms and conditions.

4. LWCF On-Site Inspection Report. The On-Site Inspection Reports are used to insure compliance by grantees with applicable Federal laws and program guidelines, and to insure the continued viability of the funded site.

5. LWCF Conversion of Use Provisions. To convert assisted sites to other than public outdoor recreation, LWCF project sponsors must provide relevant information necessary to comply with section 6(f)(3) of the LWCF Act of 1965.

6. UPARR Project Performance Report. As required by OMB Circular A–102, grant recipients must submit performance reports which describe the status of the work required under the project scope.

7. UPARR Conversion of Use Provisions. To convert assisted sites to other than public outdoor recreation, UPARR project sponsors must provide relevant information necessary to comply with section 1010 of the UPARR Act of 1978.

8. UPARR Project Agreement and Amendment Form. The Project Agreement and Amendment forms set forth the obligations assumed by grant recipients through their acceptance of Federal assistance under the UPARR

Act and any special terms and conditions.

DATES: Public comments on these eight proposed ICRs will be accepted on or before September 23, 1997.

ADDRESSES: Send comments to Kenneth R. Compton, Acting Program Manager, Recreation Grants, National Park Service (2225), P.O. Box 37127, Washington, DC 20013–7127.

All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed information collection requirements and explanatory material may be obtained by contacting Mr. Kenneth R. Compton at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Compton at 202–565–1140 or Michael D. Wilson at 202–565–1135.

SUPPLEMENTARY INFORMATION:

Title: LWCF Description and Notification Form (DNF).
Form: NPS 10–903.
OMB Number: 1024–0031.
Expiration Date: September 30, 2000.
Type of Request: Data Input.
Description of Need: Provision of computer data.
Description of Respondents: 56 State governments, DC and territories.
Estimated Annual Reporting Burden: 13 hours.
Estimated Average Burden Hours Per Response: 0.25 hours
Estimated Frequency of Response: 50 nationwide.

Title: LWCF Program Performance Report.
Form: None.
OMB Number: 1024–0032.
Expiration Date: September 30, 2000.
Type of Request: Performance report describing project status.
Description of Need: For monitoring project status.
Description of Respondents: 56 State governments, DC and territories.
Estimated Annual Reporting Burden: 690 hours.
Estimated Average Burden Hours Per Response: 1.0 hours.
Estimated Frequency of Response: 690 nationwide.

Title: LWCF Project Agreement and Amendment Forms.
Form: NPS 10–902 and 10–902a, respectively.
OMB Number: 1024–0033.
Expiration Date: September 30, 2000.
Type of Request: Grant agreement.
Description of Need: Sets forth conditions of the grant award.
Description of Respondents: 56 State governments, DC and territories.
Estimated Annual Reporting Burden: 70 hours.
Estimated Average Burden Hours Per Response: 1.0 hours.
Estimated Frequency of Response: 70 nationwide.

Title: LWCF On-Site Inspection Report.
Form: None.
OMB Number: 1024–0034.
Expiration Date: September 30, 2000.
Type of Request: Site condition/comment checklist.
Description of Need: To assure program/grant/Federal compliance.
Description of Respondents: 56 State governments, DC and territories.
Estimated Annual Reporting Burden: 3,000 hours.
Estimated Average Burden Hours Per Response: 0.5 hours.
Estimated Frequency of Response: 6,000 nationwide.

Title: LWCF Conversion of Use Provisions.
Form: None.
OMB Number: 1024–0047.
Expiration Date: September 30, 2000.
Type of Request: Application to substitute replacement property for the funded site.
Description of Need: Compliance with LWCF Act section 6(f)(3).
Description of Respondents: 56 State governments, DC and territories.
Estimated Annual Reporting Burden: 1,750 hours.
Estimated Average Burden Hours Per Response: 35 hours.
Estimated Frequency of Response: 50 nationwide.

Title: UPARR Project Performance Report.
Form: None.
OMB Number: 1024–0028.
Expiration Date: September 30, 2000.
Type of Request: Performance report describing project status.
Description of Need: For monitoring project status.
Description of Respondents: Urban cities and counties.
Estimated Annual Reporting Burden: 250 hours.
Estimated Average Burden Hours Per Response: 1.5 hours.
Estimated Frequency of Response: 165 nationwide.

Title: UPARR Conversion of Use Provisions.
Form: None.
OMB Number: 1024–0048.
Expiration Date: September 30, 2000.
Type of Request: Application to substitute replacement property for the funded site.
Description of Need: Compliance with UPARR Act section 1010.
Description of Respondents: Urban cities and counties.
Estimated Annual Reporting Burden: 75 hours.
Estimated Average Burden Hours Per Response: 25 hours.
Estimated Frequency of Response: 3 nationwide.

Title: UPARR Project Agreement and Amendment Forms.
Form: NPS 10–912 and 10–915, respectively.
OMB Number: 1024–0089.
Expiration Date: September 30, 2000.
Type of Request: Grant agreement.
Description of Need: Sets forth conditions of the grant award.
Description of Respondents: Urban cities and counties.
Estimated Annual Reporting Burden: 20 hours.
Estimated Average Burden Hours Per Response: 1.0 hours.
Estimated Frequency of Response: 20 nationwide.

NPS is soliciting comments regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility; (2) the accuracy of the burden estimate including the validity of the method and assumptions used; (3) the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden, including through the use of automated collection or other forms of information technology; or, (5) any other aspect of this collection of information.

Diane M. Cooke,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 97–19605 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that the Golden Gate National Recreation Area (GGNRA) and Point Reyes National Seashore Advisory Commission will hold a meeting of a Committee of the Whole at GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA at 7:30 p.m. on Wednesday, August 6, 1997 to receive comments from the public on the U.S. Army environmental cleanup remediation report of the Presidio,

entitled ''Final Feasibility Report, Presidio Main Installation''. For copies of this document contact David Wilkins, BRAC Environmental Coordinator, Bldg. 604, East Fort Baker, Sausalito, CA 94965, telephone (415) 289–7407.

Possible Postponement

The U.S. Army is currently requesting a 30-day extension of the comment period for the above-mentioned document. Should this extension be granted, this meeting may be postponed. For those interested in attending this meeting, please call (415) 561–4633 several days prior to August 6 to find out if this meeting is postponed.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Sonia Bolaños
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Mr. Joseph Williams
Ms. Amy Meyer, Vice Chair
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R.H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane

Dated: July 17, 1997.

Len McKenzie,

Acting General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 97–19606 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Review of Five-Year Plan for the National Center for Preservation Technology and Training

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is publishing for comment the five-year plan for the National Center for Preservation Technology and Training drafted by the Preservation Technology and Training Board.

DATES: Comments should be submitted by August 8, 1997.

ADDRESSES: Address comments concerning this notice and the five-year plan to Dr. Elizabeth A. Lyon, Chair, Preservation Technology and Training Board, National Center for Preservation Technology and Training, P.O. Box 5682, Natchitoches, LA 71497, or via email <elizabeth__lyon@nps.gov>.

FOR FURTHER INFORMATION CONTACT: For copies of the document published for review, contact John Robbins, Executive Director, National Center for Preservation Technology and Training, P.O. Box 5682, Natchitoches, LA 71497, or via email <jrobbins@alpha.nsula.edu>.

SUPPLEMENTARY INFORMATION: The National Center for Preservation Technology and Training and the Preservation Technology and Training Board were established under the National Historic Preservation Act Amendments of 1992. In its leadership, policy advice and professional oversight roles, the Preservation Technology and Training Board drafted a five-year plan for the National Center for Preservation Technology and Training. To solicit public participation in the development of the National Center for Preservation Technology and Training, the draft five-year plan is published for comment.

The five-year plan has no regulatory effect.

Dated: July 14, 1997.

E. Blaine Cliver

Designated Federal Official, Preservation Technology and Training Board, National Center for Preservation Technology and Training, National Park Service.

[FR Doc. 97–19613 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

New Jersey Coastal Heritage Trail Route; Newport, New Jersey Designation of the New Jersey Coastal Heritage Trail Route

In accordance with Public Law 100–515, dated 10/20 /88 as amended by Public Law 103–243, dated 5/4/94 Coastal Heritage Trail, New Jersey, the National Park Service, U.S. Department of the Interior, designates the following sites to constitute the Coastal Habitats theme trail of the New Jersey Coastal Heritage Trail Route to be effective August 25, 1997:

Allaire State Park, Monmouth County
Barnegat Lighthouse State Park, Ocean County
Belleplain State Forest, Cape May County
Cape May Bird Observatory, Center for Research & Education (Goshen), Cape May County
Cape May Migratory Bird Refuge, Cape May County
Cape May National Wildlife Refuge, Cape May County
Cape May Point State Park, Cape May County
Cattus Island County Park, Ocean County
Cheesequake State Park, Middlesex County
Double Trouble State Park, Ocean County
Edwin B. Forsythe National Wildlife Refuge, Atlantic County
Island Beach State Park, Ocean County
Sandy Hook Unit, Gateway National Recreation Area, Monmouth County
Wetlands Institute, Cape May County

In addition, the following sites are designated to create the Wildlife Migration theme trail of the New Jersey Coastal Heritage Trail Route to be effective November 1, 1997:

Cape May Bird Observatory, Center for Research & Education (Goshen), Cape May County
Cape May Migratory Bird Refuge, Cape May County
Cape May National Wildlife Refuge, Cape May County
Cape May Point State Park, Cape May County
Cheesequake State Park, Middlesex County
Edwin B. Forsythe National Wildlife Refuge, Atlantic County
Island Beach State Park, Ocean County

Revisions to the existing Maritime History theme trail are also being officially made effective immediately:

- Remove Fort Monmouth, U.S. Army Communications—Electronics Museum, Fort Monmouth, Monmouth County.
- Remove and change Steamboat Dock Museum, Keyport, Monmouth County from a site to a point of interest.
- Remove and change Finns Point Rear Range Light, Supawna National Wildlife Refuge, U.S. Fish and Wildlife Service, Pennsville, Salem County from a site to a point of interest.

Supplementing these Trail sites will be a series of points of interest located throughout the area encompassed by the Trail. Points of Interest have no developed interpretive programs nor do they have typical visitor amenities such as water fountains and restrooms.

The New Jersey Coastal Heritage Trail Route is being developed as a partnership effort with the State of New Jersey and all the participating sites and points of interest. The Trail area extends from the Raritan Bay area south to Cape May, generally to the east of the Garden State Parkway, and along the Delaware Bay coast and generally south of Route 49 to Deepwater. For ease of visitation, the area has been divided into five regions as follows:

Sandy Hook Region: Perth Amboy south through Middlesex, and Monmouth County to Manasquan Inlet.

Barnegat Bay Region: Ocean and Burlington Counties.

Absecon Region: Atlantic County.

Cape May Region: Eastern Cape May County from Ocean City south to Cape May Point and up the western edge of Cape May County to Norbury's Landing.

Delsea Region: Cumberland and Salem Counties generally south of Route 49 and extending into western Cape May County as far as Norbury's Landing along the Delaware Bay coast.

Welcome Centers for each region are under development with facilities at Fort Mott State Park for the Delsea Region, at Ocean View Service Area on the Garden State Parkway for the Cape May Region, an interim facility at Cheesequake State Park for the Sandy Hook Region, and planning underway for a facility at Double Trouble State Park for the Barnegat Bay Region. Brochures are available by writing New Jersey Division of Travel and Tourism, CN 826, Trenton, NJ 08625–0826 or the New Jersey Coastal Heritage Trail Route, P.O. Box 568, Newport, NJ 08345.

Janet Wolf,

Programs Director, Southern New Jersey Programs.

[FR Doc. 97–19607 Filed 7–24–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on July 10, 1997, a proposed Consent Decree in *United States* v. *Darling International, Inc.*, Civil No. 97–1611, was lodged with the United States District Court for the District of Minnesota. This Consent Decree resolves claims against Darling International, Inc. (''Darling''), for violations of Sections 301 of the Clean Water Act (''CWA''), 33 U.S.C. 1311, and a National Pollution Discharge Elimination System (''NPDES'') permit issued pursuant to Section 402 of the CWA, 33 U.S.C. 1342. The alleged violations concern Darling's discharge of certain pollutants from its rendering plant in Blue Earth River and its tributary, Coon Creek, and its failure to properly sample and report on such discharges from the plant.

The Consent Decree requires Darling to: (1) Achieve and maintain compliance with specified effluent limits, (2) undertake certain engineering analysis of its wastewater treatment facility, (3) conduct compliance audits assessing compliance of its facility with a wide range of environmental laws, and (4) pay $300,000 in civil penalties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *United States* v. *Darling International, Inc.*, D.J. Ref. 90–5–1–1–4410.

The Consent Decree may be examined at the Office of the United Stats Attorney, District of Minnesota, 600 United States Courthouse, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, at the Region V Office of the Environmental Protection Agency, 200 West Adams Street, Chicago, Illinois, 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 Consent 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. In requesting a copy, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–19592 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *Judith L. Lambert as Executrix of the Estate of Donald A. Lambert, Deceased,* No. 2:94–1012 (S.D.W.Va.), was lodged with the United States District Court for the Northern District of Indiana on July 17, 1997.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, and the Rivers and Harbors Act, 33 U.S.C. 403, as a result of the discharge of fill material onto the bank of the Kanawha River at property located in Charleston, West Virginia, which is alleged to constitute ''waters of the United States.'' The consent decree requires Judith L. Lambert, individually and in her capacity as Executrix of the Estate of Donald A. Lambert, to (1) refrain from further unpermitted discharges at the wetland; and (2) remove excess fill material from the bank of the Kanawha River.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Daniel R. Dertke, Box 23986, Washington, D.C. 20026–3986 and should refer to *United States* v. *Lambert,* DJ Reference No. 90–5–1–1–4100.

The consent decree may be examined at the Clerk's Office, United States District Court, 5303 Federal Building, 500 Quarrier Street, Charleston, West Virginia, 25301.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 97–19649 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Frame Relay Forum

Notice is hereby given that, on June 10, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Frame Relay Forum (''Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following have joined the Forum as new members: Alphanet Telecom, Canada; Develcon Electronics, Canada; GN Nettest Markham, Canada; Interphase Corporation, Dallas, TX; AccessLan Communications, San Jose, CA; Global One, Reston, VA.

The following have withdrawn their membership from the Forum: McGraw-Hill; BRAK Systems; ACC; Xyplex Networks; Sun Microsystems; ORION Atlantic; Premisys Communication; NYNEX; Litton FiberCom; Deutsche Telekom; Case Technology Ltd.; and Level One Communications. In addition MICOM Communications has moved from Worldwide to Affiliate Membership.

Membership remains open and the Forum intends to file additional written notifications disclosing all membership changes.

On April 10, 1992, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537). The last notification was filed on April 11, 1997. A notice was published in the **Federal Register** on May 19, 1997 (62 FR 27277).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–19651 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—NMR Project Participation Agreement Joint Venture

Notice is hereby given that, on June 20, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Western Atlas Logging Services Division of Western Atlas International, Inc., on behalf of he participants of the NMR Project Participation Agreement joint venture has filed written notifications simultaneously with the Attorney General and with 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 Section 6(b) of the Act, the identities of the current parties in the joint venture are: AGIP Petroleum Company, Houston, TX; Amoco Production Company, Houston, TX; Arco Exploration and Production Technology, a unit of Atlantic Richfield Company, Plano, TX; Chevron Petroleum Technology Company, a division of Chevron, U.S.A., La Habra, CA; Conoco, Inc., Houston, TX; Exxon Production Research Company, Houston, TX; Marathon Oil Company, Littleton, CO; Mobil Exploration & Technology Company, Dallas, TX; NUMAR Corporation, Houston, TX; Phillips Petroleum Company, Bartlesville, OK; Schlumberger Well Services, Sugar Land, TX; Shell Oil Company, Houston, TX and Western Atlas Logging Services Division of Western Atlas International, Inc., Houston, TX.

The nature and objective of this joint venture performed in accordance with a Cooperative Agreement is to establish a procedure for the participants to administer and scientifically conduct an integrated logging and core study using nuclear resonance (''NMR'') techniques concerning the permeability and producibility of carbonate reservoirs. The Project has two primary goals: (1) To improve NMR predictions of permeability and producibility in carbonate reservoirs from NMR logging data; and (2) to improve predictions of permeability and producibility in carbonated reservoirs by integrating NMR and other logging data. The NMR Project objectives are: (1) Acquiring additional small coring plug samples from a known test well; (2) analyzing the small coring plug samples taken from the test well; (3) logging the test well using current commercially available NMR logging techniques; and (4) making available all previously conducted logging and standard coring data from the test well, the data from the small plug coring analysis and the NMR logging data obtained from the test well to all participants of the Project for their interpretation and analysis to meet he goals of the Agreement. It is not the purpose of the joint venture under this agreement to produce a product, process or service.

Information regarding this joint venture may be obtained from Darryl M. Springs, Western Atlas Logging Services Division of Western Atlas International, Inc., Houston, TX.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–19650 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1867–97]

Immigration and Naturalization Service User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: November 12, 1997, at 10:00 a.m.

Place: Immigration and Naturalization Service Headquarters 425 I Street, N.W., Washington, D.C. 20536, Kelly Conference Room—6th Floor

Status: Open. 16th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspection services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received by the contact person at least five (5) days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, N.W., Washington, D.C. 20536, telephone number (202) 616–7498 or fax number (202)514–8345.

Dated: July 16, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–19587 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJS)–1139]

RIN 1121–ZA85

National Criminal History Improvement Program (NCHIP)

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Notice of Program Plan.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the continuation of the National Criminal History Improvement Program (NCHIP) in Fiscal Year 1997. Copies of this Announcement can also be found at http://www.ojp.usdoj.gov/bjs/.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan at (202) 307–0759 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The Program Implements the Grant Provisions of

- The Brady Handgun Violence Prevention Act (Brady Act), Public Law 103–159, 107 Stat. 1536 (1993), codified as amended at 18 U.S.C. Sections 921 *et seq.*;
- The National Child Protection Act of 1993 (Child Protection Act), Public Law 103–209, 107 Stat. 2490 (1993), codified as amended at 42 U.S.C. Sections 3759, 5101 note, 5119, 5119a, 5119b, 5119c;
- Those provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), Public Law 90–351, 82 Stat. 197 (1968), codified as amended at 42 U.S.C. Sections 3711 *et seq.*, as amended; and the Violent Crime Control and Law Enforcement Act of 1994 (Violent Crime Control Act), Public Law 103–322, 108 Stat. 1796 (1994), codified as amended at 42 U.S.C. Sections 13701 *et seq.*,which pertain to the establishment, maintenance, analysis, or use of criminal history records and criminal record systems; and,
- Related legislation pertaining to the identification, collection, analysis and interstate exchange of records relating to domestic violence and stalking (including protective orders) and to the establishment of, and exchange of data between, sexual offender registries.

The NCHIP Program to Date

The NCHIP program, administered by the Bureau of Justice Statistics, was initiated in 1995. During FY 1995 and 1996, from the total appropriation of $126.5 Million, direct awards were made to all states and eligible territories in an amount totaling over $112 Million. Six million dollars was also transferred to the FBI for implementation of the Federal segment of the National Instant Criminal Background Check System (NICS) which will provide instant interstate access to records prohibiting the sale of a firearm. About $5 Million was awarded to provide direct technical assistance to states, to evaluate the program, and to collect statistics and research data on presale firearm programs.

To date, under the NCHIP program, all States have received funds to upgrade criminal record systems (including establishing and upgrading Automated Fingerprint Identification Systems (AFIS)) and to support efforts to participate in the FBI's Interstate Identification Index (III) which permits instant exchange of criminal records among the States. Eighteen States also received additional funding under the Advanced State Award Program to initiate efforts to identify persons other than felons who are prohibited from purchasing firearms.

Consistent with the 1996 appropriation language, beginning in 1996, NCHIP program funds could also be used by States to upgrade record systems to identify and flag persons convicted of child, elderly and disabled abuse offenses. Funds could also be used to offset some of the costs of providing rapid and reliable background checks on individuals who wish to work with these sensitive populations.

Additionally, starting in 1996, NCHIP program funds could be used to develop and implement procedures for classifying and entering data regarding stalking and domestic violence (including protective orders) into local, State, and national crime information databases consistent with the provisions of the Violence Against Women Act (VAWA).

The 1997 Program

Consistent with the 1997 appropriation, funds awarded under the 1997 NCHIP program may be used to improve criminal record systems, to support interstate exchange of records through the FBI, and for authorized purposes consistent with the NCPA and the identified sections of the VAWA, as described above, and, more fully, in later sections of this Announcement.

Commitment to Participation in the Interstate Identification Index (III)

Participation by all States in the Interstate Identification Index (III) is critical to ensuring that the most accurate and complete criminal records are available instantly in response to background check inquiries regarding persons seeking positions involving national security, persons with responsibility for children, the elderly or the disabled, and persons attempting to purchase firearms. Instant interstate availability of complete records is also vital to supporting effective law enforcement strategies involving pretrial release, determinate sentencing, and correctional assignment.

Section 103(b) of the Brady Act requires that the National Instant Criminal Background Check System (NICS) become operational in November 1998. At that time, Federal ''waiting period'' requirements will no longer be applicable and presale firearm inquiries will be based on an inquiry to the NICS. Effective operation of the NICS requires that complete State criminal records be instantly available to the NICS system through the III.

At present, 32 states are participants in III. In response to a survey conducted by the Attorney General pursuant to the Brady Act, the majority of the remaining states indicated that they would become III participants before the November 1998 date for NICS implementation. In light of the importance of III participation, BJS has identified III participation as a priority goal of the 1997 program and anticipates that States which are not currently III members will focus 1997 NCHIP funds on activities which further this goal.

The 1997 Awards

Awards may be for up to 12 months. States will have the flexibility to begin activities under the award as early as October 1, 1997 and as late as the summer of 1998. Activities must be completed by June 1, 1999.

The NCHIP program was designed as a multi-year effort and States were asked to submit three-year plans as part of the FY 1995 application. Since FY 1997 NCHIP funds will support continuing implementation of these multi-year programs as well as new or ongoing efforts relating to domestic violence, stalking and child/elderly/disabled abuse, applicants are encouraged to incorporate or reference pages of previously submitted materials, when appropriate.

For designated State agencies to be eligible for 1997 NCHIP funds, an

application must be submitted to the Bureau of Justice Statistics by August 1, 1997.

Coordination With the BJA Byrne Program

Guidelines governing use of Byrne Formula funds pursuant to the 5% set-aside established under Section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, were issued on February 23, 1995, by the Bureau of Justice Assistance (BJA), in consultation with BJS. The Byrne Guidelines should be considered together with this program announcement in developing a State's program to meet the goals of the Brady Act and the Child Protection Act.

Program Goals

The goal of the NCHIP grant program is to improve the nation's public safety by—

- Facilitating the accurate and timely identification of persons who are ineligible to purchase a firearm;
- Ensuring that persons with responsibility for child care, elder care, or care of the disabled do not have disqualifying criminal records;
- Improving access to protection orders and records of people wanted for stalking and domestic violence; and
- Enhancing the quality, completeness and accessibility of the nation's criminal history record systems and the extent to which such records can be used and analyzed for criminal justice related purposes.

More specifically, NCHIP is designed to assist States—

- To expand and enhance participation in the FBI's Interstate Identification Index (III) and the National Instant Criminal Background Check System (NICS);
- To meet timetables for criminal history record completeness and participation in the III, as established for each State by the Attorney General;
- To improve the level of criminal history record automation, accuracy, completeness, and flagging;
- To develop and implement procedures for accessing records of persons other than felons who are ineligible to purchase firearms;
- To identify (through interface with the National Incident-Based Reporting System [NIBRS] where necessary) records of crimes involving use of a handgun and/or abuse of children, elderly, or disabled persons;
- To identify, classify, collect, and maintain (through interface with the National Crime Information Center [NCIC] and the III where necessary) protection orders, warrants, arrests, and convictions of persons violating protection orders intended to protect victims of stalking and domestic violence and to support the development of state sex offender registries and the interface with a national sex offender registry; and,
- To ensure that States develop the capability to monitor and assess State progress in meeting legislative and programmatic goals.

To ensure that all NCHIP-funded efforts support the development of the national criminal record system, the program will be closely coordinated with the FBI, the Bureau of Justice Assistance, and the Bureau of Alcohol, Tobacco and Firearms (BATF).

Funding under the NCHIP program is available to both those States which are subject to the 5-day waiting period (Brady States) and those States which are operating under an alternative system pursuant to approval of BATF (Brady Alternative States).

Legislative Background

Section 106 (b) of the Brady Act, provides that—

> The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used (A) for the creation of a computerized criminal history record system or improvement of an existing system; (B) to improve accessibility to the national instant criminal background system; and (C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

The provisions of 18 U.S.C. 922 (g) and (n), as amended by the Violent Crime Control Act and the ''Lautenberg amendment'', prohibit the sale of firearms to an individual who—

(1) Is under indictment for, or has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of, or addicted to, any controlled substance;

(4) Has been adjudicated as a mental defective or been committed to a mental institution;

(5) Is an alien who is illegally or unlawfully in the United States;

(6) Was discharged from the Armed Forces under dishonorable conditions;

(7) Has renounced his United States citizenship;

(8) Is subject to a court order restraining them from harassing, stalking, or threatening an intimate partner or child; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

Category (9), included as the ''Lautenberg amendment'' in the Omnibus Consolidated Appropriations Act of 1997, P.L. 104–208, 110 Stat 3009 and became effective on October 1, 1996. See Appendix A of this Announcement for text of the amendment which includes applicable definitions.

The Brady Act, enacted in November 1993 and effective in February 1994, requires that licensed firearm dealers request a presale check on all potential handgun purchasers by the chief law enforcement officer in the purchaser's residence community to determine, based on available records, if the individual is legally prohibited from purchase of the firearm under the provisions of 18 U.S.C. Section 922 or State law. The sale may not be completed for 5 days unless the dealer receives an approval before that time. The 5 day waiting period requirement terminates by November 1998, at which time presale inquiries for all firearms will be made only to the National Instant Criminal Background Check System (NICS). Section 103 of the Brady Act provides that NICS will supply information on ''whether receipt of a firearm * * * would violate (18 U.S.C. Section 922) or State law.'' As noted above, Section 106(b) of the Brady Act establishes a grant program to assist States in upgrading criminal record systems and in improving access to, and, interface with, the NICS system.

In addition, Section 106(a) of the Brady Act amended Section 509(d) of the Omnibus Act to specifically provide that funds from the 5% set-aside under the Byrne Formula grant program may be spent for ''the improvement of State record systems and the sharing * * * of records * * * for the purposes of implementing * * * (the Brady Act).''

The Child Protection Act, as amended by the Violent Crime Control Act, requires that records of abuse against children be transmitted to the FBI's national record system. The Child Protection Act also encourages States to adopt legislation requiring background checks on individuals prior to assuming responsibility for care of children, the elderly, or the disabled. Section 4 of the Act establishes a grant program to assist States in upgrading records to meet the requirements of the Act. Under the definition set forth in Section 5(3) of the Act, ''child abuse crimes'' include crimes under any law of the State and are not limited to felonies.

Both the Brady and Child Protection Acts required the Attorney General to

survey the status of State criminal history records and develop timetables for States to achieve complete and automated records. The survey was conducted during March 1994, and Governors were advised of timetables by the Attorney General in letters of May and June 1994. The letters indicated that compliance with timetable goals and the ability to join III by November 1998, assumed availability of grant funds under each Act.

The National Stalker and Domestic Violence Reduction program (Stalker Reduction), Section 40602 of the Violence Against Women Act (VAWA), Public Law 103–322, 108 Stat. 1902–1955 (1994), codified as amended at 42 U.S.C. 14031, which was included in the Violent Crime Control Act, authorized a program to assist States in entering data on stalking and domestic violence into local, State, and national data-bases. The Act emphasizes the importance of ensuring that data on convictions for these crimes are included in databases being developed with Federal funds.

Section 40606 of VAWA authorized technical assistance and training in furtherance of the purposes of the Stalker Reduction program. This section also allows for the evaluation of programs that receive funds under this provision.

The NCHIP program implements the requirements of the programs established in the Brady Act, Child Protection Act, and the Domestic Violence/Stalker Reduction provisions of VAWA.

Appropriation

Section 106(b) of the Brady Act authorized $200 million for the grant program; the Child Protection Act authorized $20 million; Section 40603 of the Violent Crime Control Act author-authorized a total of $6 million over three years for the Domestic Violence/Stalker Reduction program included in VAWA.

An appropriation of $100 million was made to implement Section 106(b) of the Brady Act for FY 1995, to be available until expended. No appropriation was made for activities authorized under the Child Protection Act or the Domestic Violence/Stalker Reduction provisions of VAWA FY 1995.

An appropriation of $25 million was made in FY 1996 to continue implementation of Section 106(b) of the Brady Act and to implement Section 4(b) of the Child Protection Act. In addition, an appropriation of $1.5 million was made in FY 1996 for the Domestic Violence/Stalker Reduction program.

In FY 1997, an appropriation of $50 million was made to further continue the implementation of Section 106(b) of the Brady Act and Section 4(b) of the Child Protection Act. For purposes relating to Domestic Violence/Stalker Reduction, an appropriation of $1.75 million was also made in FY 1997. In light of the overlap between Brady, Child Protection, and Domestic Violence/Stalker Reduction, these appropriations are combined under NCHIP.

To date, approximately $5 million has been awarded for purposes authorized under the NCPA and the Domestic Violence/Stalker Reduction provisions of the VAWA. In recognition of the importance of these issues, up to $14 million of the 1997 appropriation will be awarded for these purposes.

Program Strategy

The 1995 NCHIP program covered criminal history records improvements.

The 1996 NCHIP program also permitted funds to be used to assist States in identifying people who commit felony and serious misdemeanor offenses against children, the elderly, and/or the disabled, improving the process for classifying and entering data regarding stalking and domestic violence (including protective orders) into local, State, and national crime information databases, and covering costs associated with conducting background checks on individuals who wish to work with sensitive populations.

In 1997, the program will continue efforts to enhance State computerized criminal history records in support of the Interstate Identification Index and the NICS, to develop and implement methods to collect and flag records of persons convicted of offenses against children, the elderly, or the disabled and persons subject to a domestic violence protective order, and, to upgrade the process of entering into local, State, and national crime databases, data relating to stalking and domestic violence.

In light of the importance to all states of efforts relating to domestic violence, all states will receive an equal amount ($30K) from the 1997 appropriation under the VAWA ($1.75 Million). States were advised that an early award could be made for this amount and all seven states that opted to apply early received an award of $30 thousand. The remaining applicant states will each receive up to $30 K for these purposes as part of their 1997 NCHIP award. Subject to overall funding limits, states may, however, allocate a greater portion of their NCHIP award for such purposes.

Application and Award Process

Eligibility Requirements

Only one application will be accepted from each State. The application must be submitted by the agency previously designated by the Governor or by a successor agency designated by the Governor in writing to BJS. A State may, however, choose to submit its application as part of a multi-state consortium or other entity. In such case, the application should include a statement of commitment from each State and be signed by an individual designated by the Governor of each participating State. The application should also indicate specific responsibilities, and include a separate budget, for each State. States may receive successive awards over time, assuming availability of funds.

A grant will be made to each eligible applicant State with funds from the 1997 appropriation. All states, including states previously designated as ''priority States'', are eligible to receive funds for activities relating to criminal records improvement, as well as the additional purposes authorized under the Child Protection Act and the Domestic Violence/Stalker Reduction legislation, as described in this Announcement.

States may submit an application even though funds remain unexpended under the previous NCHIP awards. In such case, the application should describe the efforts undertaken to date, the specific reasons that funds remain unexpended, and the anticipated time when funds will be expended.

Applications must contain a start date and end date which fall between October 1, 1997 and June 1, 1999. FY 1997 projects may overlap with FY 1996 projects or the projects may run consecutively.

Program Narrative

In addition to the requirements set forth in Appendix A, the NCHIP application should include the following four parts. Since, however, this is the third year of funding under the NCHIP program, States may, at their option, satisfy requirements noted below by referencing or summarizing previous applications.

Part I. Background

This section should include a short update of current efforts relating to criminal history record improvement funded under the BJS NCHIP, Advanced State Award Program (ASAP), Criminal History Record Improvements (CHRI)

programs, and the BJA Byrne 5% set-aside or with State funds over the past year. Where applicable, the section should also include a reference to projects which will, or may be, funded under the State Identification Systems Formula Grant program (SIS) administered by the BJA. The discussion should also specify total funds received under the BJS and Byrne programs and the funds remaining at the time of application.

Part II. Identification of Needs

This part should discuss any evaluative efforts undertaken to identify the key areas of weakness in the State's criminal record system since submission of the last NCHIP application. The application should also indicate those areas which must be addressed in order to enable the state to identify ineligible firearm purchasers, persons ineligible to hold positions involving children, the elderly, or the disabled, and people wanted, arrested, or convicted of stalking and/or domestic violence offenses including protective orders.

States which are currently not members of III must include a section identifying the tasks remaining to permit III participation as soon as possible.

Part III. NCHIP Effort

This section should describe the activities to be undertaken with NCHIP funds over the 12-month period. Specifically, each application should indicate the activities proposed, how these activities relate to efforts funded under the 1995 and 1996 award, and the results that will be achieved from 1997 funding. In order to permit assessment of State progress in meeting grant goals, Part III should also set forth measurable benchmarks or goals for each proposed activity.

States which are not members of III must include a description and time table for activities which are specifically designed to permit such participation.

Part III of the application should also describe any efforts to be supported to monitor State compliance with legislative or programmatic goals through ongoing audits or other means such as statistical analysis, comparison between Computerized Criminal History (CCH) records and NIBRS or Uniform Crime Reporting (UCR) data. Studies relating to handgun use or sales approval, if proposed, should be described in this section.

In addition, to ensure program continuity and emphasize the importance of judicial efforts in meeting newly established record requirements, the application should indicate the level of funds which will be made directly available to the courts where the courts are the appropriate source for data on dispositions or other record data.

Domestic Violence/Stalking: All states except those which have already received an ''early'' award, are eligible to receive $30 K for purposes authorized under the domestic violence/stalker reduction program, as described in this Announcement. Section 3 of the application should describe the activities to be undertaken with these funds. As noted above, BJS will allocate up to a total of $14 million in FY 1997 funds for activities eligible for funding under either the Domestic Violence/Stalking provisions or the NCPA. Because funds are limited, all requests for funds in this area may not be funded to the full extent.

Section 40602(b) of the Violent Crime Control Act states that in order to be eligible to receive a funds for Domestic Violence/Stalker Reduction program actvities, a State shall certify that it has, or intends to establish, a program that enters into the National Crime Information Center the following records:

- Warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence;
- Arrests or convictions of persons violating protection or domestic violence orders; and
- Protection orders for the protection of persons from stalking or domestic violence.

The Bureau of Justice Statistics will coordinate the Domestic Violence/Stalker Reduction portion of NCHIP with the Violence Against Women Office (VAWA) at the Department of Justice.

Part IV. Coordination Between NCHIP and the Byrne 5% Set-Aside and State Identification Systems (SIS) Formula Grant Program

Funds under the Byrne Formula 5% set-aside program are available to support the improvement of record systems and to meet the goals of the Brady and Child Protection Acts.

The Bureau of Justice Statistics and the Bureau of Justice Assistance have jointly agreed that close and continuing coordination between the NCHIP and Byrne 5% set-aside program is critical to meeting the goals of the Brady Act, and the National Child Protection Act. Such coordinated efforts are also necessary to ensure the development of an effective interstate criminal history record system to meet the needs of law enforcement, the criminal justice community and the increasing number of non-criminal justice users of criminal history record information. To achieve this goal, BJS and BJA prepared Guidelines governing use of the Byrne 5% set-aside funds. The Guidelines were issued February 23, 1995, to State Administrative Agencies that receive and distribute Byrne formula grant funds.

BJS expects that program plans for projects to be funded under NCHIP and the Byrne 5% set-aside will be coordinated by the State agencies responsible for these programs in order to avoid overlap and maximize funding effectiveness. Where costs of a proposed activity exceed NCHIP available funds or are unallowable under NCHIP, the State might, for example, use Byrne funds to fill remaining needs. This joint effort, we believe, will maximize the effectiveness of both of these programs.

In May 1997, BJA announced the State Identification Systems Formula Grant Program (SIS) under which states are eligible to apply for funds to ''establish, develop, update or upgrade—(A) computerized identification systems that are compatible and integrated with the databases of the National Crime Information Center (NCIC) of the FBI; (B) the capability to analyze * * * DNA * * * in a forensic laboratory in ways that are compatible and integrated with the combined DNA Identification System (CODIS) of the FBI; and, (c) automated fingerprint identification systems that are compatible and integrated with the Integrated Automated Fingerprint Identification System (IAFIS) of the FBI''. To ensure coordination between these programs, information copies of the proposed activities to be funded under the SIS program will be provided to BJS for inclusion as part of the state's NCHIP file.

Award Period and Budget

The application may be for up to 12 months. States will have the flexibility to begin activities under the award as early as October 1, 1997 and as late as the summer of 1998. Activities must be completed by June 1, 1999.

The budget should provide details for expenses in required categories and by individual task (see Appendix A, Application content). The application should identify those agencies to receive direct funding and indicate the fiscal arrangements to accomplish fund transfer.

Application Submission and Due Dates

Applications may be submitted at any time after publication of this announcement. Applications must be

received by August 1, 1997, to be eligible for funding from the FY 1997 appropriation.

To minimize administrative burdens, States may re-submit parts of previous proposals which did not receive funds under previous NCHIP awards accompanied by a current budget.

Review Criteria

States should understand that full funding may not be possible for all proposed activities. Allocation of funds will be based on the amount requested and the following factors:

(1) The extent to which the plan supports State efforts to become a III participant and to meet the timetables established for the State by the Attorney General,

(2) The extent to which improvements in the State system, by virtue of record numbers, levels of technical development, or operating procedures, will have a major impact on availability of records throughout the national system;

(3) The proposed use or enhancement of innovative procedures which may be of value to other jurisdictions;

(4) The technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the State's current level of system development and statutory framework;

(5) Amount awarded under FY 1995 and 1996 NCHIP programs;

(6) The extent to which the state has fulfilled goals of previous NCHIP grants, expended funds awarded in previous grants, and demonstrated a commitment to record improvement through activities under the FY 1995 and 1996 NCHIP program;

(7) State commitment to the national record system as evidenced by membership in III, and participation in the FBI's National Fingerprint File (NFF), Felon Identification in Firearms Sales (FIFS) programs, etc., and the current status of development of its CCH;

(8) Reasonableness of the budget;

(9) Evidence of State progress in meeting record improvement and background check goals as measured in terms of audits, and data collection relating to presale firearm checks and background checks on persons seeking positions involving children, the aged and the disabled;

(10) Appropriate focus on criminal history data improvement regarding protection orders and crimes against children, the elderly, and the disabled;

(11) Nature of the proposed expenditures;

(12) The extent to which the plan reflects constructive interface between relevant components of the State organization and/or multi state systems; and

(13) The reasonableness of the relationship between the proposed activities and the current status of the State system, in terms of technical development, legislation, current fiscal demands, and future operating costs; and

The program does not require either ''hard'' (cash) or ''soft'' (in-kind) match. Indications of State support, however, may be interpreted as expressions of commitment by the State to the program.

All applicants must agree to participate in evaluations sponsored by the federal government. Applicants must also agree to provide data relating to Brady Act activity to the Firearm Inquiry STatistics (FIST) program in the format designated by the FIST program.

Allowable Costs

Allowable expenses are detailed below. All expenses are allowable only to the extent that they directly relate to programs described in the application's program narrative.

(1) Participation in III: This is a key goal, and costs should be related to achieving full participation. Covered costs include, but are not limited to, costs associated with automation of the database (see limitations in [4] below), synchronization of records between State and FBI, and development of necessary software and hardware enabling electronic access on an intrastate or interstate basis.

(2) Database enhancement: Improving the quality, completeness and accuracy of criminal history records is a key goal of the NCHIP effort. Allowable costs include the costs associated with implementing improved record capture procedures, establishing more effective accuracy controls, and ensuring that records of all criminal events that start with an arrest or indictment are included in the database.

In addition to felony records, funds may be used to capture data on domestic violence misdemeanors, and to ensure that data on persons convicted of child, elderly, and disabled abuse and/ or stalking and domestic violence offenses (including protective orders and violations thereof) are included in the database.

States which are currently participants in III may also use limited funds to identify and develop access to data on other categories of persons prohibited from firearm purchase under recent amendments to the Gun Control Act, as incorporated in the Brady Act. States proposing use of funds for these purposes must demonstrate in the application that results of applicable pilot efforts supported under the NCHIP Advanced State Award Program (ASAP) have been considered and that necessary protections for individual privacy will be incorporated in the proposed procedures. Information about current NCHIP supported efforts in these areas, and relevant state contacts, is available through the BJS Internet site.

(3) Improved disposition capture: Automated interface between the criminal history repository and the courts, prosecutors, and/or corrections agencies is encouraged. Funds provided to courts or prosecutors for these purposes are allowable only to the extent that the function to be supported is related to the capture of disposition or other data relating to the offender record (for example, full costs associated with establishment of court MIS systems are not allowable under the NCHIP program).

(4) Record automation: These are allowable costs only with respect to records where the subject has been arrested, indicted, convicted, or released from confinement within 5 years of the date of automation. As appropriate, allowable costs also include costs associated with system design in States with non-automated systems or in States proposing to enhance system operation to include access to non-CCH databases.

(5) Flagging of records: Upgrading the accessibility of records, through flagging, for presale and preemployment checks is an important activity. Allowable costs include costs of flagging, or algorithms used for flagging, felony records and records of persons with convictions for crimes involving children, the elderly, and/or the disabled, and persons convicted of crimes involving domestic violence and/or stalking. Costs may include the cost of technical record flagging as well as the costs associated with identification of records to be flagged (see [7] below regarding interface with NIBRS).

(6) AFIS/livescan: Automated Fingerprint Identification System (AFIS)/livescan equipment for local law enforcement agencies is allowable to improve the level of arrest and disposition reporting, but only where—

(1) The State repository system is automated, participating or looking toward participation in III, and has in place the technical capability to accept AFIS transmissions, and

(2) Sufficient traffic can be demonstrated to justify the cost, possibly through the use of regional systems.

AFIS/livescan in squad cars is not allowable since field inquiries are not a factor in checks under either the Brady Act or the Child Protection Act. Additionally, since data are not generally input to the system by the field unit, AFIS in the squad car would not support record improvement or completeness. AFIS/livescan for use in courts is allowable to support record completeness. The same conditions regarding repository capability and levels of traffic are also applicable to costs in this category.

Costs associated with AFIS/livescan communication from the repository to the FBI national system (IAFIS) are allowable but only where the State can demonstrate adequate levels of record completeness (both arrest and disposition) and current membership in III.

States should understand that Byrne 5% set-aside funds are available for AFIS/livescan, and that, accordingly, use of NCHIP funds for AFIS or livescan will only be allowable when justified as appropriate given the overall status of the State system, its participation in the national system and its planned use of Byrne 5% set-aside funds. This is particularly relevant with respect to State proposals to use NCHIP funds to cover costs of local livescan equipment.

(7) Interface with NIBRS: Funds may be used to interface with any State data system which is compatible with NIBRS for purposes of identifying persons convicted of crimes against children, the elderly, or the disabled, involving domestic violence and/or stalking, and/or identification of records involving firearm crimes for operational or research purposes. NCHIP funds are not available, however, to develop the NIBRS database.

(8) Research, evaluation, monitoring, and audits: Costs associated with research or evaluation efforts are allowable to the extent that they are directly associated with a project approved in the application. Costs associated with monitoring State compliance with legislative or programmatic goals, through ongoing or periodic audits or other procedures, are allowable and encouraged. The purchase of equipment such as modems and the necessary communications and data software for storing and transmitting evaluative data between States and to BJS or other designated federal agencies is an allowable expense.

(9) Conversion of juvenile records to the adult system: The Attorney General has recently amended Federal Regulations to allow the FBI to accept juvenile records if submitted by the State or local arresting agency. Expenditures to interface juvenile and adult records are allowable if consistent with relevant State law and undertaken to further the goals of the NCHIP program.

(10) Missing dispositions backlog reduction: These costs are allowable to improve the level of disposition reporting but only where limited to records with arrests within the past 5 years. States must also propose a strategy to prevent future backlogs from developing.

(11) Equipment upgrades: Upgrade costs are allowable where related to improving availability of data and where appropriate given the level of data completeness, participation in III, etc. Replacement costs will be considered but States are encouraged to contribute some portion of the total costs.

(12) Training, participation in seminars and meetings: Limited funds may be used to cover costs of training and participation in State, regional, or national seminars or conferences (including travel, where necessary).

(13) Expenditures related to presale handgun background checks: Funds are allowable to cover costs incurred by a governmental agency for equipment or development of capability required to conduct presale background checks. This ''governmental agency'' limitation may be waived in a very limited number of cases where the State has implemented a functioning background check system and can demonstrate that the vast preponderance of inquiries are made by a limited number of dealers, that technical and procedural safeguards have been established to protect the privacy of potential purchasers, and that the equipment to be provided to dealers would be of use for operation under the permanent system. Waivers will only be considered in States which are participants in III and which have achieved high levels of automation and record completeness.

NCHIP funds may not be used to cover costs of conducting presale background checks.

(14) Reducing cost of background checks: States may use funds to develop and implement technologies that lower costs of conducting background checks. These funds may also be used to pay all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or other voluntary organization to reduce the amount of fees charged for such background checks.

(15) Allowable activities relating to implementation of the Child Protection Act and the Domestic Violence and Stalker Reduction provisions of the VAWA:

Capturing domestic violence and/or stalking protection orders;

Flagging of child abuse records, crimes against children, the elderly and the disabled, convictions for domestic violence and/or stalking, and domestic violence protection orders;

Incorporating serious misdemeanor offenses against children, the elderly and the disabled into existing criminal history records;

Offsetting the cost of certain background checks, including development and implementation of technological and procedural advances;

Improving processes for entering data regarding stalking and domestic violence into local, State, and national crime information data bases.

The Bureau of Justice Statistics will shortly initiate efforts to develop standard definitions of domestic violence and child abuse. States proposing to use funds for flagging or to interface with NIBRS to identify convictions for domestic violence and/or stalking, domestic violence protection orders, or crimes against children must coordinate their efforts with BJS.

Text of ''Lautenberg Amendment''

The ''Lautenberg Amendment'' amends the Federal Gun Control Act to prohibit the transfer of firearms to a person convicted of a ''misdemeanor crime of domestic violence.'' The text of the amendment is set forth below.

Section 668. Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence

(a) Definition.—Section 921(a) of title 18, United States Code, is amended by adding at the end of the following:

''(33)(A) Except as provided in subparagraph (c), the term 'misdemeanor crime of domestic violence' means an offense that—

''(i) is a misdemeanor under Federal or State law; and

''(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

''(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

''(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

''(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the

jurisdiction in which the case was tried, either—

''(aa) the case was tried by a jury, or

''(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

''(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.''

(b) Prohibitions.—

(1) Section 922(d) of such title is amended—

(A) by striking ''or'' at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting '';or''; and

(C) by inserting after paragraph (8) the following:

''(9) has been convicted in any court of a misdemeanor crime of domestic violence''.

(2) Section 922(g) of such title is amended—

(A) by striking ''or'' at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ''; or''; and

(C) by inserting after paragraph (8) the following:

''(9) has been convicted in any court of a misdemeanor crime of domestic violence''.

(3) Section 922(s)(3)(B)(I) of such title is amended by inserting '', and has not been convicted in any court of a misdemeanor crime of domestic violence'' before this semicolon.

(c) Government Entities Not Excepted.—Section 925(a)(1) of such title is amended by inserting ''sections 922(d)(9) and 922(g)(9) and'' after ''except for''.

Application and Administrative Requirements

Application Content

All applicants must submit:

- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information.
- OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances.
- OJP Form 4061/6 Certifications.
- OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Applicants are requested to submit an original and two copies of the application and certifications to the following address:

Application Coordinator

Bureau of Justice Statistics, 633 Indiana Avenue, NW., Washington, DC 20531, Phone: (202) 616–3500

Standard Form 424 (SF–424). The SF–424, a one page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. No Application can be Accepted Without a Completed, Signed Original SF–424. Directions to complete each item are included on the back of the form.

Standard Form 424A (SF–424A). All applications must include SF–424A, Budget Information for all years of project activity. Applicants should ensure that all appropriate columns and rows balance. Directions to complete this form are found on page 3 of SF–424A.

Detailed budget. Applicants must provide a detailed justification for all costs including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project.

Budget narrative. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to specific tasks and allowable cost categories and should provide a justification and explanation for the budgeted items including the criteria and data used to arrive at the estimates for each budget category. Please note applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $100,000.

The budget narrative should indicate amounts to be made available to agencies other than the grant recipient (for example, the agency with responsibility for CCH, the courts, local agencies.)

Applicants for grants must submit a budget narrative on separate sheets. The budget narrative should detail by budget category for Federal and non-Federal (in-kind and cash) share. The purpose of the budget narrative is to relate items budgeted to project activities and to provide justification and explanation for budget items, including criteria and data used to arrive at the estimates for each budget category. The following information is provided to assist the applicant in developing the budget narrative.

a. *Personnel category.* List each position by title (and name of employee if available), show annual salary rate and percentage of time to be devoted to the project by the employee. Compensation paid for employees engaged in federally assisted activities must be consistent with that paid for similar work in other activities of the applicant.

b. *Fringe benefits category.* Indicate each type of benefit included and explain how the total cost allowable for employees assigned to the project is computed.

c. *Travel category.* Itemize travel expenses of project personnel by purpose (e.g., faculty to training site, field interviews, advisory group meetings, etc.) And show basis or computation (e.g., ''Five trips for x purpose at $80 average cost—$50 transportation and two days per diem at $15'' or ''Six people to 30-day meeting at $70 transportation and $45 subsistence.'') In training projects where travel and subsistence for trainees is included, this should be separately listed indicating the number of trainees and the unit costs involved.

(1) Identify the tentative location of all training sessions, meetings, and other travel.

(2) Applicants should consult such references as the Official Airline Guide and the Hotel and Motel Redbook in projecting travel costs to obtain competitive rates.

d. *Equipment.* List each type of equipment to be purchased or rented with unit or monthly costs.

e. *Supplies.* List items within this category by major type (office supplies, training materials, research forms, postage) and show basis for computation. Provide unit or monthly estimates.

f. *Contractual category.* State the selection basis for any contract or subcontract or prospective contract or subcontract (including construction services and equipment).

For individuals to be reimbursed for personal services on a fee basis, list by name or type of consultant or service, the proposed fee (by day, week, or hour) and the amounts of time to be devoted to such services.

For construction contracts and organization (including professional associations and education institutions performing professional services), indicate the type of service to be performed and the estimated contract cost data.

g. *Construction category.* Describe construction or renovation which will be accomplished using grant funds and the method used to calculate cost.

h. *Other category.* Include under ''other'' such items as rent, reproduction, telephone, and janitorial

or security services. List items by major type with basis of computation shown. (Provide square footage and cost per square foot for rent—provide local and long distance telephone charges separately.)

i. *Indirect charges category.* The Agency may accept an indirect cost rate previously approved for an applicant by a Federal agency. Applicants must enclose a copy of the approved rate agreement with the grant application.

j. *Program income.* If applicable, provide a detailed estimate of the amount of program income to be generated during the grant period and its proposed application (to reduce the cost of the project or to increase the scope of the project). Also, describe the source of program income, listing the rental rates to be obtained, sale prices of publications supported by grant funds, and registration fees charged for particular sessions. If scholarships (covering, for example, registration fees) are awarded by the organization to certain conference attendees, the application should identify the percentage of all attendees that are projected as ''scholarship'' cases and the precise criteria for their selection.

Program narrative. All applications must include a program narrative which fully describes the expected design and implementation of the proposed program. OJP Form 4000/3 (Rev. 1–93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a time line of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected.

The application should include a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program.

Assurances. OJP Form 4000/3 (Rev 1–93) must be included in the application submission. If submitting this form separate from the SF–424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 can be obtained from the BJS Application Coordinator. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR. Part 69, ''New Restrictions on Lobbying,'' and 28 CFR Part 67, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and Administrative Requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, with additional information and guidance, are contained in the ''Financial and Administrative Guide for Grants,'' Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual, provided upon request, is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil Rights Obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability.

The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits—to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices—to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation—to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, ''Audits of State and Local Governments'' which establishes regulations to implement the Act. OMB Circular A–128, ''Audits of State and Local Governments,'' outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, ''when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.''

Intergovernmental Review of Federal Programs

Federal Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State ''single point of contact.''

If the State has established a ''single point of contact,'' and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State ''single point of contact'' at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's ''single point of contact'' by the end of the review period, this will be interpreted as a ''no comment'' response.

If the State has not established a ''single point of contact,'' or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Dated: July 22, 1997.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 97–19676 Filed 7–24–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 22, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ({202} 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call {202} 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday-Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before August 25, 1997.

The OMB 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 clarity 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 submission of responses.

Agency: Employment Standards Administration.

Title: Optional Use Payroll Form Under the Davis-Bacon Act.

OMB Number: 1215–0028 (extension).

Frequency: Biennially.

Affected Public: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 50.

Estimated Time Per Respondent: 45 minutes.

Total Burden Hours: 38.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Form WH–1 is a voluntary use form used by the Department of Labor to collect data and prepare an economic report for the industry committee which sets industry wage rates in American Samoa.

Agency: Mine Safety and Health Administration.

Title: Fir Protection—Escape and Evacuation Plan.

OMB Number: 1219–0051 (reinstatement).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 401.

Estimated Time Per Respondent: New plans=5 hours; revised plans=2.5 hours.

Total Burden Hours: 1,930.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Requires coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of existing work areas.

Agency: Employment and Training Administration.

Title: Program Monitoring Report and Job Service Complaint Form.

OMB Number: 1205–0039 (revision).

Form	Affected public	Respondents	Frequency	Average time per response
Complaint Log Recordkeeping	Local Offices	168	15 times	25 minutes.
ETA 8429	Local Offices	2,520	One-time	8 minutes.
Outreach Log Recordkeeping	Local Offices	150	130 times	12 minutes.
ETA 5148	State Government	52	Quarterly	1 hour, 10 minutes.

Total Burden Hours: 5,530.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Job Service forms are necessary as part of Federal Regulations at 20 CFR Parts 651, 653 and 658 published as a result of NAACP vs. Brock. The forms allow the United States Employment Service (USES) to track regulatory compliance of services provided to Migrant Seasonal Farmworkers by the State Employment Service Agencies (SESA).

Theresa M. O'Malley,

Departmental Clearance Officer.

[FR Doc. 97–19647 Filed 7–24–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

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 extension of the collection of the State Income and Eligibility Verification provisions of the Deficit Reduction Act. 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 September 23, 1997.

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 clarity 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.

ADDRESSES: Lorenzo Roberts, Unemployment Insurance Service, 200 Constitution Ave. N.W., Room S–4231, Frances Perkins Building, Washington, D.C. 20210; telephone 202–219–5616, ext. 175; FAX 202–219–8506 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background: The Deficit Reduction Act of 1984 established an income and eligibility verification system for the exchange of information among State agencies administering specific programs. The programs are: Aid to Families with Dependent Children, Medicaid, Food Stamps, Supplemental Security Income, Unemployment Compensation and any State program approved under Title I, X, XIV, or XVI of the Social Security Act. Under the Act, programs participating must exchange information to the extent it is useful and productive in verifying eligibility and benefit amounts to assist in the child support program and the Secretary of Health and Human Services in verifying eligibility and benefit amounts under Titles II and XVI of the Social Security Act.

II. Current Actions: As the only continuous source of information on the Income and Eligibility program, the data is required to monitor and evaluate that program. As a result of decreased estimated workloads, the requested burden is a reduction of 4509 hours from the previously requested total.

Agency: Employment and Training Administration.

Title: Income and Eligibility.

OMB Number: 1205–0238.

Agency Number: None.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 10.033 minutes.

Estimated Total Burden Hours: 52,269 hours.

Report	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
New & Additional Claims	21.0 Mil	Annually	21.0 Mil	2 seconds	11,666
New Claims	243,100	Annually	243,100	10 minutes	40,517
Totals					52,269

Total Burden Cost (operating/maintaining): At approximately $20 per hour average State salary, the State burden is estimated at $1,045,380 per year.

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: July 22, 1997.

Grace A. Kilbane,

Director, Unemployment Insurance Service, Employment and Training Administration.

[FR Doc. 97–19646 Filed 7–24–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in

Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 37–96 Change 1

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, popularly known as the ''welfare reform'' bill, made several changes which affect the unemployment compensation (US) program. The purpose of this UIPL is to provide information on one of these changes which was not discussed in the Department's previous issuance on PRWORA, UIPL 37–96. This change relates to the definition of ''legal process'' used for purposes of intercepting child support obligations from UC.

UIPL 34–97

For a number of years, State US agencies have been seeking guidance concerning the permissible disclosure of UC information, particularly in the areas of payment of costs and safeguarding information. In March of 1992, the Department of Labor published a Notice of Proposed Rulemaking in the **Federal Register** on the confidentiality and disclosure of State records compiled or maintained for the Purposes of the Federal-State UC program. As an interim step, until the rule is published, the Department is issuing this UIPL to inform States of the Department's position in this area.

Dated: July 22, 1997.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEUL
Date: June 10, 1997
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 34–97
To: All State Employment Security Agencies
From: Grace A. Kilbane, Director, Unemployment Insurance Service
Subject: Disclosure of Confidential Unemployment Compensation Information

1. *Purpose.* To advise States of the Department of Labor's (Department) interpretation of Federal law regarding the basic confidentiality and disclosure requirements for the Federal-State unemployment compensation (UC) program and to announce that the Department is planning to move ahead with development of a rule.

2. *References.* Sections 303(a)(1) and 303(a)(8) of the Social Security Act (SSA); Income and Eligibility Verification System (IEVS) regulations at 20 CFR Part 603; Unemployment Insurance Program Letter (UIPL) No 52–80, dated September 9, 1980 (disclosure to food stamp agencies and to child support enforcement agencies); UIPL No. 12–87, dated March 11, 1987 (disclosure to agencies participating in a State IEVS); UIPL No. 11–89, dated January 5, 1989 (disclosure to the Department of Housing and Urban Development and to representatives of a public housing agency; this disclosure provision expired on October 1, 1994); UIPL No. 23–96, dated May 31, 1996 (disclosure to private entities); UIPL No. 37–96, dated September 25, 1996 (disclosure to child support enforcement agencies and redisclosure to an agent, and disclosure to the Secretary of Health and Human Services for purposes of the National Directory of New Hires operated by the Federal Parent Locator Service).

3. *Background.* For a number of years, State UC agencies have been seeking guidance concerning the permissible disclosure of UC information, particularly in the areas of payment of costs and safeguarding information. Accordingly, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (57 FR 10064) on March 23, 1992, on the confidentiality and disclosure of State records compiled or maintained for the purposes of the Federal-State UC program. Just over 100 responses were received from various interested parties. As an interim step, until the rule is published, the Department is issuing this UIPL.

4. *Rulemaking.* The Department will seek to place in regulations all of the requirements of statutory provisions relating to the confidentiality and disclosure of State records compiled or maintained for the purposes of the Federal-State UC program. The aim of the rule will be to prescribe comprehensive requirements for protecting the confidentiality of State records collected for the purposes of the Federal-State UC program, define the limits on the rule of confidentiality, set forth the statutorily required and permitted exceptions to the rule of confidentiality, and prescribe the conditions under which the required and permitted disclosures shall or may be made. Among the various issues to be discussed in the rule will be disclosure to governmental entities and ''quasi'' governmental entities and redisclosure to private entities acting as agents for governmental entities, as well as issues raised in response to the NPRM.

Until a rule is issued, this UIPL, the UIPLs cited above in item 2, *References,* other UIPLs subsequently issued and 20 CFR Part 603 are the Department's interpretation of Federal law with respect to confidentiality and disclosure.

5. *Interpretaiton.* The basic confidentiality requirement for the Federal-State UC program has its origin in the beginning of the program and is derived form Sections 303(a)(1) and 303(a)(8), SSA. It pertains to information required from individuals and employers or employing units for the purposes of the administration of the revenue and benefit provisions of State UC laws, hereafter ''UC information.'' It applies to State UC agencies and the entire executive branch of State government.

Section 303(a)(1), SSA, requires, as a condition for a State to receive administrative grants, that the State law provide for:

[S]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

Section 303(a)(8), SSA requires, as a condition for a State to receive administrative grants, that the State law provide for:

The expenditure of all moneys received * * * solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law * * *.

It has been the Department's longstanding interpretation of Sections 303(a)(1) and 303(a)(8), SSA, that UC information is confidential and, except as noted in item 6 below, is not subject to disclosure. The basis for this prohibition is that disclosure may discourage individuals claiming benefits from exercising their rights under the law, may deter employers from furnishing information necessary for UC program operations, may impede the ''proper and efficient administration'' of the UC program, and may create notoriety for the UC program if the information were misused. Any publicity could have disrupting effects on the operations of the State agency and effect the agency's mission of insuring claimants ''full payment of unemployment compensation when due.''

6. *Exceptions.* Following are exceptions to the rule of confidentiality.

a. *Disclosure to Public Officials—Permissible.* UC records may be disclosed to Federal, State and local public officials, including law enforcement officials, in the administration or enforcement of a law by the public official. The Department encourages such disclosure in the interest of effective government. This disclosure of records to public officials is permitted only under the following conditions:

- Disclosure of the specific record(s) requested is permitted by the State law of the State to which the request is made.
- Such disclosure would not significantly hinder or delay the processing of UC claims or other UC activities, and such disclosure would not impede the efficient administration of the State UC law.
- The use of the disclosed information is limited to official governmental duties.
- If disclosure entails more than casual or incidental staff time, arrangements are made for the reimbursement of the costs involved in providing the information.

b. *Disclosure to Public Officials—Required.* Several specific provisions of Federal law require disclosure of UC information to certain governmental entities, which are food stamp agencies, child support enforcement agencies, the National Directory of New Hires and agencies participating in a State IEVS. This UIPL will not discuss these requirements as they have already been addressed in 20 CFR Part 603 and the various UIPLs cited above in item 2, *References.*

c. *Disclosure to Private Entities—UIPL No. 23–96.* UC information may be disclosed to a private entity under a written agreement

which requires ''informed consent'' from the individual to whom the information pertains, safeguards the information once it is in the hands of the private entity and closely restricts or prohibits further dissemination, and requires the private entity to pay all costs associated with disclosure. Consent is not informed if an individual is not told that governmental records, including a State's records, may be released and to whom the information may be provided. A more complete discussion is found in UIPL No. 23–96.

d. *Subpoenas.* Where a subpoena requests the disclosure of confidential UC information that is not permitted to be disclosed to the party seeking it, disclosure is permitted only after a motion to quash, on the grounds that it is privileged UC information, has been overruled by a court. This is because, while subpoenas may be issued by a public official (e.g., a clerk of court), they are generally requested for a private party, such as a claimant or an employer. Cooperation with law enforcement officials is encouraged so that there should be no need for these officials to rely upon subpoenas.

7. *Action Required.* State administrators are requested to provide the above information to appropriate staff.

8. *Inquiries.* Direct questions to the appropriate Regional Office.

U.S. Department of Labor

Employment and Training Administration

Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEUL
Date: July 21, 1997
Rescissions: None
Expiration Date: Continuing
Directive: Unemployment Insurance Program Letter No. 37–96 Change 1
To: All State Employment Security Agencies
From: GRACE A. KILBANE, Director, Unemployment Insurance Service
Subject: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996—Deduction of Child Support Obligations from Unemployment Compensation through Legal Process

1. *Purpose.* To advise States of an amendment to the definition of legal process made to Federal law by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

2. *References.* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193); the Social Security Act (SSA); and Unemployment Insurance Program Letter (UIPL) No. 37–96.

3. *Background.* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), popularly known as the ''welfare reform'' bill, made several changes which affect the unemployment compensation (UC) program. The purpose of this UIPL is to provide information on one of these changes which was not discussed in the Department's previous issuance on PRWORA, UIPL 37–96. This change relates to the definition of ''legal process'' used for purposes of intercepting child support obligations from UC.

4. *Legal Process.* The child support intercept requirement for UC is found at Section 303(e)(2)(A)(iii)(III), SSA. It requires States, as a condition for UC administrative grants, to deduct and withhold child support obligations from any UC otherwise payable to an individual if the obligation is ''required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 462(e)),'' SSA. This definition of legal process was repealed by Section 362(b)(1), PRWORA. Although a new definition of legal process was added to the SSA, the UC intercept provisions were not amended to reference this new definition.

The new definition of legal process is found at Section 459(i)(5), SSA, as amended by Section 362(a), PRWORA. It is substantially similar to the old definition. However, whereas the old definition included only courts of competent jurisdiction, the new definition is expanded to include administrative agencies of competent jurisdiction. Thus, a writ, order, summons, or other similar process in the nature of garnishment which is issued by an administrative agency of competent jurisdiction is now included in the definition of legal process.

Under the repealed Section 462(e), the definition of legal process applied to Section 459. In contrast, the new definition is itself contained in Section 459. In the Department's view, the shifting of the definition from Section 462 to Section 459 is merely technical. Further, the child support intercept provision must be effectuated. Therefore, although the child support intercept provision was not amended to reference the new definition, the Department interprets it as re/quiring that States deduct and withhold UC in accordance with the new definition of legal process. This interpretation gives effect to one of the purposes of the PRWORA—to strengthen child support enforcement mechanisms.

States should be aware that any additional costs incurred by the State UC agency in administering this new definition must be reimbursed by the appropriate State or local child support enforcement agency as required by Section 303(e)(2)(C), SSA.

5. *Action.* States will need to determine whether amendment to State law is necessary.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 97–19648 Filed 7–24–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Maine
ME970022 (Feb. 14, 1997)
New Jersey
NJ970002 (Feb. 14, 1997)
NJ970003 (Feb. 14, 1997)
NJ970004 (Feb. 14, 1997)
NJ970007 (Feb. 14, 1997)
New York
NY970001 (Feb. 14, 1997)
NY970002 (Feb. 14, 1997)
NY970003 (Feb. 14, 1997)
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NY970044 (Feb. 14, 1997)
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NY970046 (Feb. 14, 1997)
NY970047 (Feb. 14, 1997)
NY970048 (Feb. 14, 1997)
NY970050 (Feb. 14, 1997)
NY970051 (Feb. 14, 1997)
NY970060 (Feb. 14, 1997)
NY970072 (Feb. 14, 1997)
NY970073 (Feb. 14, 1997)
NY970075 (Feb. 14, 1997)
NY970077 (Feb. 14, 1997)

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None

Volume III:

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North Carolina
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NC970003 (Feb. 14, 1997)

Volume IV:

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Minnesota
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WI970005 (Feb. 14, 1997)
WI970013 (Feb. 14, 1997)

Volume V:

Iowa
IA970004 (Feb. 14, 1997)
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IA970012 (Feb. 14, 1997)
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IA970024 (Feb. 14, 1997)
Kansas
KS970006 (Feb. 14, 1997)
KS970007 (Feb. 14, 1997)
KS970012 (Feb. 14, 1997)
KS970016 (Feb. 14, 1997)
Nebraska
NE970001 (Feb. 14, 1997)
NE970003 (Feb. 14, 1997)
NE970011 (Feb. 14, 1997)
NE970019 (Feb. 14, 1997)
Texas
TX970003 (Feb. 14, 1997)
TX970005 (Feb. 14, 1997)
TX970010 (Feb. 14, 1997)
TX970055 (Feb. 14, 1997)
TX970069 (Feb. 14, 1997)

Volume VI:

None

Volume VII:

California
CA970002 (Feb. 14, 1997)
CA970004 (Feb. 14, 1997)
CA970027 (Feb. 14, 1997)
CA970028 (Feb. 14, 1997)
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CA970047 (Feb. 14, 1997)
CA970048 (Feb. 14, 1997)
Nevada
NV970001 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 18th Day of July 1997.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–19349 Filed 7–24–97; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 1:00 p.m., Friday, August 1, 1997.

PLACE: EAA Fly-In Convention, Aviation Safety Center, Wittman Regional Airport, Oshkosh, Wisconsin.

STATUS: Open.

MATTERS TO BE DISCUSSED:

6886 Briefs of Aviation Accidents—1996 File Nos:
1325—Pueblo, Colorado, 10/4/96
1505—Fairchild AFB, Washington, 09/14/96

6887 Safety Recommendations to FAA Concerning Amateur-Built Experimental Aircraft

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: July 22, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–19724 Filed 7–22–97; 4:27 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–269, 50–270, and 50–287

Duke Power Company Oconee; Nuclear Station, Units 1, 2, and 3 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 for Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored. The proposed action would also exempt the licensee from the requirements to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in response to the licensee's application dated February 4, 1997, as supplemented on March 19, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and features designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors. The proposed exemption is needed, however, for Oconee to continue to operate in accordance with its license and Commission regulations.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Oconee Nuclear Station Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. Technical Specifications requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires the criticality in the fuel storage and handling system to be prevented by physical systems or processes, preferably by use of geometrically safe configurations. This is met at Oconee, as identified in the Technical Specification Section 3.8 and in the Updated Final Safety Analysis Report (UFSAR) Section 9.1, by detailed procedures that must be available for use by refueling personnel. Therefore, as stated in the Technical Specifications, these procedures, the Technical Specifications requirements, and the design of the fuel handling equipment with built-in interlocks and safety features, provide assurance that no incident could occur during refueling operations that would result in a hazard to public health and safety. In addition, the design of the facility does not include provisions for storage of fuel in a dry location.

UFSAR Section 9.1.1, New Fuel Storage, states that new fuel will normally be stored in the spent fuel pool serving the respective unit and that it may be also be stored in the fuel transfer canal. The fuel assemblies are stored in five racks in a row having a nominal center-to-center distance of 2 feet 1¾ inches. New fuel may also be stored in shipping containers. (Note that in none of these locations would criticality be possible.)

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluent nor cause any significant occupational exposures since the Technical Specifications, design controls (including geometric spacing and design of fuel assembly storage spaces) and administrative controls

preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves 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 that 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 exemption, the staff considered denial of the requested exemption. Denial of the request 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 Related to the Operation of Oconee Nuclear Station Units 1, 2, and 3'' dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on July 17, 1997, the staff consulted with the South Carolina State official, Mr. Henry Porter of the Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed exemption. 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 February 4, 1997, and supplement dated March 19, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 21st day of July 1997.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19635 Filed 7–24–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Clinton Power Station, Unit No. 1 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 No. NPF–62, issued to Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated July 22, 1997, for a temporary, partial exemption from the requirements contained in General Design Criterion (GDC) 17, ''Electric Power Systems,'' of Appendix A to 10 CFR 50. The requested exemption would only be effective through and including October 15, 1997, and would permit plant operation with one fully qualified offsite circuit and one circuit that does not strictly conform to the capacity and capability requirements of GDC 17.

The Need for the Proposed Action

GDC 17 requires that an onsite and an offsite electric power system be provided to permit functioning of structures, systems, and components important to safety. The safety function for each of these two systems (assuming the other system is not functioning) is to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences, and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The Clinton Power Station (CPS) licensing basis assumes two independent offsite electric power sources that are capable of supplying power to emergency buses. These consist of 138–kV and 345–kV offsite circuits. During the current refueling outage at CPS, the licensee has determined that, for short and intermittent periods of time, voltage on the 345–kV offsite source has not consistently remained above the minimum required value conservatively established for CPS. This is primarily due to the fact that unusually low voltages are occurring as a result of the current lack of operating generators in Illinois, coupled with high load demands during peak hours. The licensee has determined that all practical measures taken to boost voltage, short of interrupting service to customers, are not sufficient to maintain required voltage. Further action to restore voltage would necessitate power interruptions.

Conformance to GDC 17 requires that both offsite sources have sufficient capacity and capability such that voltage is continuously maintained above the minimum values conservatively established for the facility. Due to the intermittent voltage conditions for the 345–kV system described above, the licensee cannot demonstrate that this offsite circuit has sufficient capacity and capability at all times. With this offsite source experiencing intermittent periods of lower than expected voltage, it would have to be declared inoperable. Plant startup or continued plant operation is not permitted with one offsite source inoperable.

The licensee has proposed a temporary, partial exemption to the requirements of GDC 17 that would only be effective through and including October 15, 1997. The exemption would temporarily allow plant operation with one fully qualified offsite circuit and one circuit that does not strictly conform to the capacity and capability requirements of GDC 17. Strict compliance with GDC 17 is not necessary to achieve the underlying purpose of the rule and would impose undue hardship to the licensee. The licensee has implemented measures to assess when the 345-kV system voltage would be inadequate in the event of a plant trip, performed an analysis to assess the risk associated with continued plant operation for the period of time within which the intermittent condition is likely to occur (i.e., through the end of hot, summer weather), and established procedures that will restore

bus voltage within 10 minutes in the event that it is needed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed exemption would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.

Granting the exemption would not significantly increase the probability of unavailable offsite power in the event of an accident and, therefore, would not significantly increase the probability of a radiological release from CPS. The availability and reliability of the onsite power sources would not be affected by the exemption. The availability and reliability of the offsite source having adequate voltage (i.e., the 138-kV circuit) would also not be affected. Although there is a slight increase in the probability of having the low-voltage offsite source unavailable following a plant trip, or both sources unavailable in the event of a loss of the other offsite source, this increase is small based on the factors identified, and actions available to restore offsite voltage.

Electric power would still be available for safety-related equipment required to mitigate an accident. The proposed change does not involve an increase in the consequences of an accident, 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 involves 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 that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Denial of the requested action would effectively preclude operation of the facility until the intermittent voltage condition is resolved (i.e., until the end of hot, summer weather).

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982, related to the operation of the Clinton Power Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on July 22, 1997, the NRC staff consulted with the Illinois State representative regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing 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 this action, see the licensee's letter dated July 22, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 23rd day of July 1997.

For the Nuclear Regulatory Commission.

Gail H. Marcus,

Director, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–19805 Filed 7–24–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 30–10]

Proposed Collection; Comment Request for the Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for a revised information collection. RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for OPM to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Approximately 2,500 RI 30–10 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 1,250 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before September 23, 1997.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–0001.

For Information Regarding Administrative Coordination—Contact: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–19638 Filed 7–24–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5

CFR 213 on July 7, 1997 (62 FR 36320). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 1997 and June 31, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during June 1997. The following Schedule A authority was revoked during June 1997:

Department of Housing and Urban Development

One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years. Effective June 13, 1997.

Schedule B

No Schedule B authorities were established during June 1997.

The following Schedule B authority was revoked during June 1997:

Federal Trade Commission

Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years. Effective January 23, 1997.

Schedule C

The following Schedule C authorities were established during 1997:

Department of Agriculture

Confidential Assistant to the Administrator of the Foreign Agricultural Service. Effective June 12, 1997.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective June 12, 1997.

Department of Commerce

Executive Assistant to the General Counsel, Office of the General Counsel. Effective June 9, 1997.

Confidential Assistant to the Chief of Staff. Effective June 27, 1997.

Executive Assistant to the Deputy Secretary of Commerce. Effective June 30, 1997.

Department of Defense

Staff Specialist to the Director, NATO Policy. Effective June 17, 1997.

Department of Education

Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs. Effective June 2, 1997.

Special Assistant to the Counselor to the Secretary. Effective June 3, 1997.

Congressional Assistant to the Special Assistant to the Deputy Secretary. Effective June 16, 1997.

Department of Energy

Executive Assistant to the Deputy Secretary of Energy. Effective June 10, 1997.

Foreign Affairs Specialist to the Director, Office of Arms Control and Nonproliferation. Effective June 19, 1997.

Staff Assistant (Legal) to the Assistant Secretary for Environmental Management. Effective June 23, 1997.

Senior Advisor to the Assistant Secretary for Environment, Safety and Health. Effective June 26, 1997.

Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective June 26, 1997.

Department of Health and Human Services

Confidential Assistant to the Executive Secretary. Effective June 12, 1997.

Special Assistant to the Deputy Secretary of Health and Human Services. Effective June 12, 1997.

Department of Housing and Urban Development

Special Assistant for Inter-Faith Community Outreach to the Director, Office of Special Actions. Effective June 12, 1997.

Deputy Assistant Secretary for Community Empowerment to the Assistant Secretary for Community Planning and Development. Effective June 26, 1997.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 26, 1997.

Deputy Assistant Secretary for Long Range Planning to the Assistant Secretary for Public Affairs. Effective June 26, 1997.

Department of the Interior

Special Assistant to the Deputy Assistant Secretary for Policy and International Affairs. Effective June 16, 1997.

Special Assistant to the Associate Director for Policy and Management Improvement. Effective June 19, 1997.

Department of Justice

Special Assistant to the Director, Community Relations Service. Effective June 12, 1997.

Department of the Navy (DOD)

Attorney Advisor to the Principal Deputy General Counsel. Effective June 12, 1997.

Department of State

Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective June 13, 1997.

Secretary (Typing) to the Legal Advisor. Effective June 19, 1997.

Department of Transportation

Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective June 27, 1997.

Department of the Treasury

Confidential Staff Assistant to the Deputy Secretary of Treasury. Effective June 2, 1997.

Environmental Protection Agency

Assistant to the Deputy Chief of Staff (Scheduling). Effective June 9, 1997.

National Mediation Board

Confidential Assistant to the Board Member. Effective June 26, 1997.

Staff Assistant to the Member of the Board. Effective June 27, 1997.

National Transportation Safety Board

Special Assistant to the Chairman. Effective June 12, 1997.

Office of Management and Budget

Special Assistant to the Controller. Effective June 9, 1997.

Office of the United States Trade Representative

Special Assistant to the U.S. Trade Representative. Effective June 6, 1997.

Confidential Assistant to the Assistant United States Trade Representative for Intergovernmental and Public Affairs. Effective June 9, 1997.

Confidential Assistant to the Chief of Staff. Effective June 9, 1997.

Confidential Assistant to the Special Trade Negotiator. Effective June 9, 1997.

Confidential Assistant to the Deputy United States Trade Representative. Effective June 12, 1997.

Confidential Assistant to the General Counsel. Effective June 20, 1997.

United States Information Agency

Staff Assistant to the Director, Office of Public Liaison. Effective June 3, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–19637 Filed 7–24–97; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, August 7, 1997
Thursday, August 21, 1997
Thursday, September 4, 1997
Thursday, September 11, 1997

The meetings will start at 10 a.m. and will be held in Room 5A060A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: July 21, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–19636 Filed 7–24–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Form 24F–2—SEC File No. 270–399—OMB Control No. 3235–0456
Form N–1A—SEC File No. 270–21—OMB Control No. 3235–0307
Form N–3—SEC File No. 270–281—OMB Control No. 3235–0316
Form N–4—SEC File No. 270–282—OMB Control No. 3235–0318
Form N–14—SEC File No. 270–297—OMB Control No. 3235–0336
Form S–6—SEC File No. 270–181—OMB Control No. 3235–0184

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget the following proposed amendments to previously approved collections of information discussed below. The proposed amendment would implement a provision of the National Securities Markets Improvement Act of 1996 (''Improvement Act'') relating to the registration of certain investment company securities under the Securities Act of 1933 (''Securities Act'').

Form 24F–2 is the form used by open-end management investment companies (''mutual funds''), unit investment trusts (''UITs'') and face-amount certificate companies (collectively, ''funds'') to pay registration fees under the Securities Act. Form 24F–2 is required to be filed annually. It is estimated that approximately 6,680 funds file Form 24F–2 for a total of 6,680 annual burden hours.

Form N–1A is used by mutual funds to register with the Commission as investment companies under the Investment Company Act of 1940 (the ''Investment Company Act'') and to register their offerings of securities under the Securities Act. Form N–1A is filed annually and updated on occasion. It is estimated that approximately 7,500 fund file Form N–1A for a total of 990,000 annual burden hours.

Form N–3 is used by insurance company separate accounts organized as management investment companies to register with the Commission as investment companies under the Investment Company Act and to register their offerings of securities under the Securities Act. Form N–3 is filed annually and updated on occasion. It is estimated that approximately 53 funds file Form N–3 for a total of 27,499 annual burden hours.

Form N–4 is used by insurance company separate accounts organized as UITs to register with the Commission as investment companies under the Investment Company Act and to register their offerings of securities under the Securities Act. Form N–4 is filed annually and updated on occasion. It is estimated that approximately 288 funds file Form N–4 for a total of 40,562 annual burden hours.

Form N–14 is the registration statement used by mutual funds to register securities under the Securities Act which are to be issued in connection with mergers and other forms of business combinations. Form N–14 is filed on occasion. It is estimated that approximately 95 funds file Form N–14 for a total of 58,900 annual burden hours.

Form S–6 is used by UITs to register their securities under the Securities Act (UITs register as investment companies on a separate Form N–8B–2). Form S–6 is filed annually. It is estimated that approximately 3,263 funds file Form S–6 for a total of 114,205 annual burden hours.

The proposed amendments to Form 24F–2 reflect the changes made by the Improvement Act to the method of determining the amount of registration fees on fund securities. The proposed amendments would simplify the Form, reduce the burdens of filing the Form, and assist funds in complying with the changes made by the Improvement Act. The proposed amendments to Forms N–1A, N–3, N–4, N–14 and S–6 would conform the language on the cover page of each Form to the amended statutory provisions and would not result in any change in the paperwork burden of these Forms.

Complying with the collection of information requirements of the rule is mandatory. The filings that the rule requires to be made with the

Commission are avaialbel to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 15, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19627 Filed 7–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Reynolds Metals Company, Common Stock, Without Par Value; Preferred Stock Purchase Rights) File No. 1–1430

July 21, 1997.

Reynolds Metals Company (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'').

The reasons cited in the application for withdrawing the Securities from listing and registration on the CHX include the following: The Company originally listed its Securities on the CHX in 1994 in connection with its public offering of 11 million shares of its 7% PRIDES, Convertible Preferred Stock (the ''PRIDES'') and the listing of the PRIDES on the CHX. On December 31, 1996, the Company redeemed all outstanding PRIDES shares, with each outstanding PRIDES share being converted into .82 of a share of Company common stock.

The Company's securities have been listed on the New York Stock Exchange, Inc. (''NYSE'') since the 1930s and the vast majority of trades of Company securities take place on the NYSE. In the Company's view, the amount of trading that takes place on the CHX does not warrant the cost of maintaining the listing.

According to the CHX, the Company has complied with the rules of the CHX with respect to its application to withdraw its Securities from listing.

Any interested person may, on or before August 11, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19626 Filed 7–24–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings; Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 28, 1997.

Open meetings will be held on Tuesday, July 29, 1997, at 10:00 a.m., and on Thursday, July 31, 1997, at 10:00 a.m. Closed meetings will be held on Tuesday, July 29, 1997 following the 10:00 open meeting, and on Thursday, July 31, 1997, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meetings in a closed session.

The subject matter of the open meeting scheduled for Tuesday, July 29, 1997, at 10:00 a.m., will be:

The Commission will hear oral argument on appeal by the Division of Enforcement from an administrative law judge's decision in the matter of Ferdinand Russo and Russo Securities, Inc. For further information, please contact Rachel H. Graham at (202) 942–0975.

The subject matter of the closed meeting scheduled for Tuesday, July 29, 1997, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, July 31, 1997, at 10:00 a.m., will be:

Consideration will be given to whether to adopt amendments to rule 10f–3 under the Investment Company Act of 1940. The amendments to rule 10f–3 would permit registered investment companies that have certain affiliated relationships with an underwriter to purchase a greater percentage of an offering of securities during the existence of an underwriting or selling syndicate. The amendments also would permit these investment companies to purchase securities in certain foreign offerings and offerings of unregistered securities. For further information, please contact C. Hunter Jones at (202) 942–0690.

The subject matter of the closed meeting scheduled for Thursday, July 31, 1997, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

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 at (202) 942–7070.

Dated: July 23, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19838 Filed 7–23–97; 3:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38852; File No. SR–CBOE–97–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Change to a Modified Capitalization-Weighted Index for the Goldman Sachs Technology Composite Index

July 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed Amendment No. 1 to the proposed rule change.[3] The Exchange has requested accelerated approval for the proposal, as amended. This order approves the Exchange's proposal, as amended, on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing, pursuant to a determination by Goldman, Sachs & Co. (''Goldman Sachs''), to change the weighting methodology of its Goldman Sachs Technology Composite Index (''Composite Index'') from a capitalization-weighted index to a modified capitalization-weighted index, limiting components to a maximum of 8.5% of the Composite index weight.[4] The Exchange seeks continued approval to list and trade options on these indexes after Goldman Sachs has instituted these changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists and trades European-style, cash-settled options on the Composite Index pursuant to approval by the Commission.[5] The Composite Index is a capitalization-weighted index of the universe of technology-related company stocks which meet certain objective criteria.[6] The Composite Index is re-balanced semi-annually, in January and July.

The Exchange has been informed by Goldman Sachs that as of the July 1997 re-balancing (effective as of July 18, 1997), Goldman Sachs will be revising its weighting criteria for the Composite Index to a modified capitalization-weighted index. Under the new criteria, no stock can account for more than 8.5% of the weight of the Composite Index at each semi-annual re-balancing. This weighting methodology will be implemented in the same manner as the weighting methodology for the sub-indexes to the Composite Index which were previously approved for options trading by the Commission.[7] The Exchange is requesting that the Commission approve the continued listing and trading of options on the Composite Index after this change is instituted by Goldman Sachs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–30 and should be submitted by August 14, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[8] Specifically, the Commission finds that the Exchange's proposal to modify the weighting methodology of the Composite Index from a capitalization-weighted index to a modified capitalization-weighted

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[1] 15 U.S.C. 78s(b)(1)(1988).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eileen Smith, Exchange, to Janice Mitnick, Commission, dated July 18, 1997 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended its proposal to clarify how the Exchange would notify market participants of the change and also states that the impact of the change should be limited because as of July 14, 1997, there were only seven contracts of open interest expiring after the July expiration date. amendment No. 1 also makes a technical correction to the rule filing regarding the basis of summary effectiveness of the proposal.

[4] The Composite Index is a capitalization-weighted index designed to measure the performance of the universe of high capitalization technology stocks. *See* Release No. 34–37693 (September 17, 1996), 61 FR 50362 (September 25, 1996) (order approving the Exchange's propsal to trade options on the Composite Index (SR–CBOE–96–43)).

[5] See *id., supra n. 4.*

[6] See *id., supra* n. 4.

[7] *See* Release No. 34–37696 (September 17, 1996), 61 FR 50358 (September 25, 1996) (order approving the Exchange's proposal to trade options on six sub-indexes to the Composite Index (SR–CBOE–96–44).

[8] In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

index, which will limit components to a maximum of 8.5% of the Composite Index weight, will contribute to the maintenance of fair and orderly markets consistent with investor protection by ensuring that no one stock or group of stocks dominate the Composite Index.

The Exchange states that approving the proposed change will allow the continued listing and trading of options on the Composite Index without interruption. As noted above, the change will alter the weighting methodology for the Composite Index from a capitalization-weighted index to a modified capitalization-weighted index, limiting components to a maximum weight of 8.5% of the Composite Index.[9] Currently, two components each comprise more than 8.5% of the Composite Index.[10] The revision to a modified capitalization-weighted index will reduce the impact that those two components have on the index, thereby reducing the opportunity for the Composite Index to be dominated by a few component stocks.

The Commission believes that the proposed weighting method does not present any new or novel regulatory issues as the Exchange's proposal adopts a weighting method which was previously approved by the Commission for sub-indices to the Composite Index.[11] The Composite Index will be calculated through a modified capitalization-weighted method, which is a hybrid between equal weighting (which may impose liquidity concerns for smaller-cap stocks) and capitalization weighting (which may result in two or three stocks dominating an index's performance). Under the method, the maximum weight for each component in the Composite Index will be capped at 8.5%, as of the semiannual rebalancing date. The weight of each component below 8.5% will be market capitalization weighted, and therefore will not be capped. At the time of semi-annual rebalancing, component stocks with weights in excess of their capped weight in the Composite Index will be restored to the appropriate capped weight. In approving this change, the Commission believes that the new methodology should be beneficial by preventing one or a few stocks from dominating the index and having an undue effect on the index value.

The Exchange proposes to implement the change in calculating the Composite Index after the July expiration, at the close on July 18, 1997. This coincides with the semi-annual rebalancing of the Composite Index. The Commission notes that as of July 14, there were only seven contracts of open interest which expired after the July expiration. While the change to a modified capitalization-weighted index will be applied to these open contracts, the Commission believes that the potential impact on those seven contracts is de minimis and that, in any case, any impact will be outweighed by the anticipated benefits from the alteration of the weighting mechanism.

The Exchange has notified market participants of its proposal to alter the weighting methodology through a notice to members and member firms.[12] The Exchange has also stated it will inform its members and member firms upon approval of the proposal by the Commission.[13] The Commission believes that this will ensure investors have been adequately notified about the impending change prior to its implementation, and should provide them with sufficient time to make any desired adjustments to their positions.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register.** By accelerating the effectiveness of the Exchange's rule proposal, the Commission will enable the new weighting methodology to become effective concurrent with the effective date for the semi-annual rebalancing, subsequent to the July expiration. In addition, the Commission believes that the proposed weighting method does not present any new or novel regulatory issues as the Exchange's proposal adopts a weighting method which will assist in ensuring that one or a few components will not dominate the Composite Index. Further, as noted above, the modified-capitalization weighted method being adopted for the Composite Index is the same method approved by the Commission for the sub-indices to the Composite Index.[14] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CBOE–97–30), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–19589 Filed 7–24–97; 8:45 am]

BILLING CODE 8010–01–M

[9] Under a modified capitalization-weighted index, the number of index shares of a component stock which is not capped will equal the company's outstanding common shares. The umber of index shares for a stock which is capped will equal its maximum weight, multiplied by the adjusted total market capitalization of the Composite Index, and divided by the component stock's closing price on the rebalancing date. The Composite Index's adjusted total market capitalization is the total outstanding market capitalization, adjusted to reflect the number of capped stocks.

[10] As of July 2, 1997, Intel comprised 10.06% of the Composite Index, and Microsoft comprised 13.05% of the Composite Index. Phone conversation between Eileen Smith, Exchange and Janice Mitnick, Commission, on July 11, 1997.

[11] *See supra* n. 7.

[12] See Amendment No. 1. *supra* n.3.

[13] Phone conversation between Eileen Smith, Exchange and Janice Mitnick, Commission, on July 16, 1997.

[14] See *supra* n.7.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 38847; File No. SR–GSCC–97–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Regarding Off-The-Market Transactions

July 17, 1997.

On March 11, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–97–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 16, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The modifications to GSCC's rules revise the loss allocation provisions and margining process relating to the netting and guaranteed settlement of transactions that have a price that differs significantly from the prevailing market price for the underlying security (''off-the-market transactions''). More specifically, GSCC is defining an off-the-market transaction as any of the following: (1) An options exercise; (2) a single transaction that is (i) greater than $1 million in par value and (ii) either one percentage point higher than the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38601 (May 9, 1997), 62 FR 27089.

highest price or one percentage point lower than the lowest price for the underlying security on the day of the submission of data on the transaction to GSCC (with such prices being obtained by GSCC from a third-party source selected by GSCC for such purpose); or (3) a pattern of transactions submitted by two members that if looked at as a single transaction would constitute an off-the-market transaction.

If a member submits data on a trade day before settlement. GSCC will not be able to collect margin before it has guaranteed the trade. Thus, if one side defaults, GSCC could be exposed to a significant loss if the transaction has a price significantly different from the market price. Pursuant to this rule change, GSCC will continue to allow off-the-market transactions to the insolvent's counterparty.

This rule change also amends GSCC's rules on payments of credits resulting from an increase in the value of a member's positions. Every day, GSCC collects from its members any debit and pays to its members any credit from the difference between the contract price of such member's positions at GSCC and GSCC's system price (*i.e.*, a mark-to-market payment). If the failed member's counterparty also defaults on its settlement obligations to GSCC after that member has received the benefit of the mark-to-market relating to an off-the-market transaction. GSCC is exposed to significant loss. Pursuant to the rule change, if the debit side has not paid the mark-to-market amount associated with an off-the-market transaction to GSCC on the morning of the business day following the submission of the trade (*i.e.*, the debit side fails before it has satisfied its funds settlement obligation), GSCC will not pay the credit to the other side.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. GSCC's risk management system is designed to margin and to allocate loss for transactions based on the current market price. GSCC's margining system through the mark-to-market process reprices transactions every day to the current market price and thus assures that GSCC's loss is limited to a one day price movement. GSCC maintains a clearing fund designed to cover the remaining loss. Because off-the-market transactions have a price significantly different from the current market price, GSCC's margining system is not designed to cover losses resulting from these trades.

The proposal adopts loss allocation and margin rules that take into account off-the-market transactions. Such rules should limit the loss that GSCC could incur upon a member default. Without the proposal, GSCC could be exposed to a loss that could effect its ability to meet its settlement obligations to its participants. By limiting GSCC's exposure to these trades, the proposal is consistent with GSCC's obligation to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–19628 Filed 7–24–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9533]

Commonwealth of Pennsylvania

Allegheny County and the contiguous Counties of Armstrong, Beaver, Butler, Washington, and Westmoreland in the Commonwealth of Pennsylvania constitute an economic injury disaster loan area as a result of flash flooding that occurred on July 1, 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on April 16, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

DateD: July 16, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–19633 Filed 7–24–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2962]

State of Texas

As a result of the President's major disaster declaration on July 7, 1997, and an amendment thereto on July 14, I find that Bandera, Bexar, Burnet, Guadalupe, Kendall, Kerr, Llano, Mason, Medina, Real, Travis, and Uvalde Counties in the State of Texas constitute a disaster area due to damages caused by severe thunderstorms and flooding beginning on June 21, 1997 and continuing. Applications for loans for physical damages may be filed until the close of business on September 5, 1997, and for loans for economic injury until the close of business on April 7, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Texas may be filed until the specified date at the above location: Atascosa, Bastrop, Bell, Blanco, Caldwell, Comal, Edwards, Frio, Gillespie, Gonzales, Hays, Kimble, Kinney, Lampasas, Maverick, McCulloch, Menard, San Saba, Williamson, Wilson, and Zavala.

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 296211 and for economic injury the number is 952700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 15, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–19634 Filed 7–24–97; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2961]

State of Wisconsin

As a result of the President's major disaster declaration on July 7, 1997, I find that Milwaukee, Ozaukee, Waukesha, and Washington Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding which occurred June 21–23, 1997. Applications for loans for physical damages may be filed until the close of business on September 5, 1997, and for loans for economic injury until the close of business on April 7, 1998 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Dodge, Fond Du Lac, Jefferson, Racine, Sheboygan, and Walworth in the State of Wisconsin may be filed until the specified date at the above location.

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 296111 for physical damage and 952600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–19619 Filed 7–24–97; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collections listed below have been submitted to OMB for emergency clearance. OMB approval has been requested by July 31, 1997:

1. *0960–NEW.* SSA will conduct tests of three prototype disability forms, SSA–3368, SSA–3369 and SSA–3820. The information collected on these forms will be used in the determination of disability by the State Disability Determination Services. The SSA–3368 will be used to develop medical evidence and to assess the alleged disability. The SSA–3369 will be used to collect information about an individual's past work history. The SSA–3820 will be used to obtain various types of information about a child's condition, his/her treating sources and/or other medical sources of evidence. The respondents are applicants for disability benefits.

	SSA–3368	SSA–3369	SSA–3820
Number of Respondents:	7,500	5,000	5,000
Frequency of Response:	1	1	1
Average Burden Per Response (minutes):	30	30	30
Estimated Annual Burden (hours):	3,750	2,500	2,500

2. *Questionnaire for Children Claiming SSI Benefits—0960–0499.* The information collected on form SSA–3881 is used by the State Disability Determination Services offices to evaluate disability in children who apply for supplemental security income payments. The respondents are individuals who apply for supplemental security income benefits for a disabled child.

Number of Respondents: 978,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 326,000 hours.

To receive a copy of the form or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA; *Attn:* Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM; *Attn:* Nicholas E. Tagliareni, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: July 18, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–19570 Filed 7–24–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 USC Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of

information was published on April 18, 1997 (62 FR 19160).

DATES: Comments must be submitted on or before August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywonkarte, Office of Motor Carriers, (202) 366–2987, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Medical Qualifications Requirements.

OMB Number: 2125–0080.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Medical examiners, medical specialists, physicians, licensed doctors of medicine or osteopathy, motor carriers, and CMV drivers.

Abstract: The Motor Carrier Safety Act of 1984 requires the Secretary of Transportation to prescribe regulations to ensure that the physical qualification of commercial motor vehicle (CMV) operators is adequate to enable them to operate CMVs safely. Information about an individual's physical condition must be collected in order for the FHWA and motor carriers to verify that the individual meets the physical qualification standards for CMV drivers and for the FHWA to determine whether the individual is physically able to operate a CMV safely.

Estimated Annual Burden Hours: 459,105 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 22, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–19662 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending July 18, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C Section 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–2725
Date Filed: July 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC12 Telex Mail vote 881—Reso 002o
USA-Austria/Belgium/Germany/ Netherlands/
Switzerland/Scandinavia fares
Correction to Mail Vote
Intended effective date: August 15, 1997

Docket Number: OST–97–2726
Date Filed: July 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC COMP 0128 dated June 25, 1997
Mail Vote 877—Children's Fares from Gulf States of
Bahrain, Oman, Qatar, United Arab Emirates
Amendment to Mail Vote—Telex TW878
Intended effective date: October 1, 1997

Docket Number: OST–97–2727
Date Filed: July 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PSC/MV/107 dated June 20, 1997
Mail Vote S072—Electronic Reservations
r–1—898a r–2—RP1784
Intended effective date: August 1, 1997

Docket Number: OST–97–2728
Date Filed: July 16, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–ME 0025 dated June 24, 1997
Europe-Middle East Resolutions r1–38
Minutes—PTC2 EUR–ME 0025 dated July 11, 1997
Tables—PTC2 EUR–ME Fares 0008 dated July 4, 1997
Intended effective date: January 1, 1998

Docket Number: OST–97–2751
Date Filed: July 18, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC12 USA–EUR Fares 0010 dated July 18, 1997
US–UK add-ons
Intended effective date: October 1, 1997

Docket Number: OST–97–2753
Date Filed: July 18, 1997
Parties: Members of the International Air Transport Association
Subject:
PTC1 Mail Vote 882
Chile-Brazil intermediate fares r1
PTC12 Mail Vote 883
South Atlantic-Europe revalidation r2
Intended effective date: August 1, 1997/October 1, 1997

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–19661 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 18, 1997

The following Applications for Certificate of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–2713.
Date Filed: July 14, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 11, 1997.

Description: Application of JetFlight Limited, pursuant to 49 U.S.C. 41301 and Subpart Q of the Department's Regulations, applies for a foreign air carrier permit to engage in on-demand charter foreign air transportation between various points in the British Dependent Territory of the Cayman Islands, located in the British West

Indies and various points in the United States.

Docket Number: OST–97–2719.

Date Filed: July 15, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1997.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, requests an amendment and reissuance of its domestic certificate of public convenience and necessity to authorize USA Jet to provide interstate charter air transportation of persons, property and mail.

Docket Number: OST–97–2720.

Date Filed: July 15, 1997.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 12, 1997.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests an amendment and reissuance of its certificate of public convenience and necessity to authorize USA Jet to provide foreign charter air transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services.

[FR Doc. 97–19660 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Task Force on Assistance to Families in Aviation Disasters Open Meeting

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of meeting.

SUMMARY: The Task Force on Assistance to Families in Aviation Disasters will hold a meeting to discuss assistance to families of passengers involved in aviation accidents. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, August 13, and Thursday, August 14, 1997, from 9:30 a.m. to 4:30 p.m. each day.

ADDRESSES: The meeting will take place in Room 2230 of Department of Transportation (DOT) Headquarters, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven R. Okun, Task Force Executive Director, telephone 202–366–4702, or Marc C. Owen, Task Force Staff Director, mailing address, 400 7th Street SW., Room 5424, Washington, DC 20590, telecopier 202–366–7147, and telephone 202–366–6823.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the Task Force on Assistance to Families in Aviation Disasters (Task Force). The Task Force was established by the Aviation Disaster Family Assistance Act of 1996 to develop recommendations on ways to improve the treatment of families of passengers involved in aviation accidents. The meeting is open to the public both days. In particular, topics for discussion at the meeting include systems used by airlines to notify families of passengers following an aviation disaster and the training that should be given to airline employees who interact with family members following aviation disasters.

Issued in Washington, DC, on July 21, 1997.

Steven R. Okun,

Task Force Executive Director, Department of Transportation.

[FR Doc. 97–19663 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reopening of the Public Comment Period Regarding the Notice of Intent To Prepare Supplemental Environmental Impact Statement; Cal Black Memorial Airport, Halls Crossing, Utah

AGENCY: Federal Aviation Administration (FAA).

ACTION: Reopening of comment period.

SUMMARY: The Northwest Mountain Region of the FAA announces it has reopened the public comment period regarding its notice of intent to prepare Draft and Final Supplemental Environmental Impact Statements (SEIS) for further study of potential noise impacts associated with operation of Cal Black Memorial Airport at Halls Crossing, Utah. Interested agencies and persons are invited to submit written comments as to their concerns regarding potential noise impacts upon areas surrounding the airport and how those impacts could be addressed in the Draft SEIS.

DATES: In order to be considered, written comments must be received on or before August 29, 1997.

ADDRESSES: Send comments to Mr. Dennis G. Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave. S.W., Renton, WA 98055–4056. Questions concerning the Draft SEIS or the process being applied by the FAA in connection with this study should also be directed to Mr. Ossenkop.

Issued in Renton, Washington on July 18, 1997.

David A. Field,

Acting Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 97–19678 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28970]

Southwest Regional Spaceport, NM

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA), Office of the Associate Administrator for Commercial Space Transportation (AST) announces the availability of the Draft Environmental Impact Statement (DEIS) prepared for the proposed Southwest Regional Spaceport to be located in Sierra and Doña Ana Counties, New Mexico. The DEIS will be available for a comment period of forty-five (45) days beginning on the date of publication in the **Federal Register** of this Notice of Availability.

DATES: Comments on the Southwest Regional Spaceport DEIS must be received during the public comment period that begins July 25, 1997 and continues until September 8, 1997. Comments postmarked after that date will be considered to the extent practicable. Two public meetings will be held to discuss and receive comments on the Southwest Regional Spaceport DEIS: The first public meeting will be on August 19, 1997, at 7:00 pm at the Convention Center, 300 Daniel Street, Truth Or Consequences, New Mexico, and the second one will be on August 20, 1997, at 7:00 pm at the Hilton, 705 South Telshor Street, Las Cruces, New Mexico.

FOR FURTHER INFORMATION OR A COPY OF THE SOUTHWEST REGIONAL SPACEPORT DEIS CONTACT: Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation (AST), 400 Seventh Street, SW., room number 5402a–H., Washington, D.C. 20590, Telephone: (202) 366–2455; or Mr. Lou R. Gomez, Program Manager,

New Mexico Office for Space Commercialization, 505 South Main Street, Suite 134, Las Cruces, New Mexico 88001. Telephone: (505) 525–5668; or refer to the following Internet address: http://ast.dot.gov

ADDRESSES: Copies of the DEIS will be available for review in the following locations: 1. Albuquerque-Bernalillo County Public Library, 50 Copper Avenue NW, Albuquerque, NM 87102; 2. El Paso Community, Northwest Center, 6701 S. Desert Blvd., El Paso, TX 79835; 3. El Paso Public Library, 501 N. Oregon St., El Paso, TX 79910; 4. Los Alamos County Library System, 1742 Central Avenue, Los Alamos, NM 87544; 5. New Mexico State University Library, Serials Department, P.O. Box 3475, Las Cruces, NM 88003–3475; 6. Sandia National Laboratories, Department 3140, Technical Library, P.O. Box 5800, Albuquerque, NM 37185; 7. Santa Fe Public Library, 145 Washington Ave, Santa Fe, NM 87501; Thomas Branigan Memorial Library, 200 E. Picacho Avenue, Las Cruces, NM 88001; 8. Truth or Consequences Public Library, 325 Library Lane, Truth or Consequences, NM 87901; 9. University of New Mexico, General Library, Albuquerque, NM 87131.

Written comments on the Southwest Regional Spaceport DEIS should be mailed to: Docket Clerk, Docket No. [28970], Federal Aviation Administration, 800 Independence Avenue SW., Room 915, Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration's Office of the Associate Administrator for Commercial Space Transportation (FAA/AST), in cooperation with the State of New Mexico's Office of Space Commercialization (NMOSC) and Department of Economic Development, have prepared a joint Federal/State Draft Environmental Impact Statement (DEIS) for the proposed commercial Southwest Regional Spaceport in southern New Mexico. The operator of the launch site will require a license from AST in accordance with 49 U.S.C. Subtitle IX, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101–70119 (1994), formerly, the Commercial Space Launch Act of 1984, as amended.

An EIS is necessary for FAA/AST to make a licensing determination on the proposal to operate the SRS and comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

The proposed project will require a land exchange between The Bureau of Land Management and New Mexico State Land Office. For this to occur, BLM must amend its resource management plan (RMP) to make the Federal lands at issue available to be exchanged. BLM regulations require that the public shall be provided with opportunities to meaningfully participate in and comment on proposed amendments to RMPs. BLM's determination to amend its RMP is a major Federal action subject to compliance with NEPA.

Project Description

The New Mexico Office of Space Commercialization (NMOSC) proposes to construct and establish a commercial launch site on approximately 250,000 acres located in Sierra and Doña Ana Counties between the cities of Truth Or Consequences and Las Cruces, New Mexico, as a key element of the State's efforts to bring regional assets together as a consortium to form the Southwest Space Complex. The site was selected by NMOSC because it is superior to other candidate sites with respect to population density, land use, ownership, accessibility, orbital insertion physics, access to airspace, and lack of obvious environmental constraints.

The purpose of the Southwest Regional Spaceport project is to provide launch, recovery, and associated support facilities to the developing commercial space industry. The State anticipates that this project would enhance space-related economic development within the State of New Mexico generally and throughout the southwest region of the United States, as well as increase the ability of the U.S. launch industry to recapture a share of the international satellite launch market. The Southwest Regional Spaceport is intended to support the launch and recovery of fully reusable space vehicles.

Development of the Southwest Regional Spaceport, and other elements of the Southwest Space Complex, will occur in phases over a number of years. The proposed action encompassed by the EIS includes the construction of launch and associated support facilities and the extension of roads and utilities necessary to parallel the phased development of reusable launch technology NMOSC anticipates a completed Southwest Regional Spaceport early in the next century.

Major components of the proposed Southwest Regional Spaceport would include a central control facility for administrative functions; an airfield capable of handling aircraft and launch vehicles that land horizontally; a maintenance and integration facility for payload-processing and space vehicles; a launch/landing complex with three launch/landing pads; a flight operations control center; and a cryogenic fuel plant to manufacture and store liquid hydrogen and liquid oxygen.

Alternatives to the proposed action include no action and development of minimal infrastructure. With the minimal infrastructure alternative, construction of the Southwest Regional Spaceport facilities would be kept to a low level that is capable of supporting initial commercial space launch operations of RLVs.

The FAA/AST intends to consult and coordinate with Federal, state and local agencies which have jurisdiction by law or special expertise with respect to any environmental impacts associated with the proposed project. The FAA/AST is currently making the DEIS available to Federal and State agencies and the public to allow review and to solicit comments. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. A final EIS will be prepared following the forty-five day (45) comment period and conduct of public meetings.

Issued in Washington, D.C. on July 18, 1997.

Patricia Grace Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 97–19677 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on August 12, 1997, from 9:30 a.m. to 12:30. Arrange for oral presentations by August 1, 1997.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, Virginia 22314–2818.

FOR FURTHER INFORMATION CONTACT: David Higginbotham, Office of Rulemaking, Aircraft & Airport Rules Division, ARM–200, 800 Independence

Avenue, SW, Washington, DC 20591, telephone (202) 267–3498.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II). The agenda will include status reports on the following:

1. Rotorcraft External Load Combination Safety Requirements.
2. Normal Category Gross Weight and Passenger Issues.
3. Performance and Handling Qualities Requirements.
4. Critical Parts.

Attendance is open to the public but will be limited to the space available. The public must make arrangements by August 1, 1997, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 21, 1997.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–19569 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 6]

Candidates for the Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has completed screening of three candidate companies for the Pipeline Risk Management Demonstration Program. They are Northwest Pipeline Corporation, Shell Pipe Line Corporation, and Tennessee Gas Pipeline Corporation/East Tennessee Natural Gas Company. OPS believes these companies' demonstration project proposals satisfy all eligibility and screening criteria, based on a Letter of Intent submitted by each company to OPS, a subsequent OPS screening, and examination of each company's safety and environmental compliance record. OPS is now engaging in consultations with these companies to clarify and refine demonstration project provisions. Once OPS and a company reach agreement, OPS will approve the company's proposal and the demonstration project can get underway. OPS invites public comment on any aspect of these companies' proposals.

OPS may approve up to ten demonstration projects. OPS will screen additional candidate companies after the July 25, 1997, deadline for companies to submit Letters of Intent. Summaries of their Letters of Intent will be published in subsequent **Federal Register** notices.

DATES: OPS requests that comments to this notice be submitted on or before August 25, 1997 so that OPS can give the comments full consideration before deciding whether to approve a company's proposal. However, comments on any aspect of the Demonstration Program, including the individual projects, will be accepted in the Docket throughout the 4-year demonstration period.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Eben Wyman, (202) 366–0918 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION:

I. Background

Appendix A of The Requests for Applications for the Pipeline Risk Management Demonstration Program (62 FR 14719), published on March 27, 1997, describes the processes by which OPS will receive, review, approve, monitor, modify, and terminate company risk management demonstration projects. Companies considering participating in a demonstration project must submit a Letter of Intent to OPS no later than July 25, 1997. Based on Letters of Intent and additional screening considerations, OPS will choose up to ten candidate companies whose project proposals merit further consideration. OPS will enter into consultations with candidate companies to clarify and refine demonstration project provisions. OPS may approve up to ten demonstration projects. If OPS approves a project, OPS will issue an order and begin auditing project performance.

OPS expects the projects, and the Demonstration Program itself, to evolve from lessons learned during the four-year demonstration period. OPS hopes to learn whether and in what form risk management should be incorporated into the Federal pipeline safety program on a permanent basis.

OPS is requesting public input through all stages of the demonstration projects, beginning with receipt of the Letters of Intent. Specific benefits of public involvement in the Demonstration Program for OPS, industry, State and community representatives include:

- Exchange of information about specific and relevant local factors during the decision-making process that may not be known at the Federal or State level; and
- Feedback regarding the success of the Demonstration Program in accomplishing the goals for which it was designed.

OPS requests comments on safety, environmental, socioeconomic, land use, geographic and any other issues that relate to these demonstration project proposals. OPS will consider public input, as well as input from local, State, and other federal agencies, during its consultations with candidate companies to clarify and refine demonstration project provisions. OPS will publish the final provisions for each project and allow for additional public comment before issuing an order signifying project approval. OPS will continue to seek broadbased input on individual demonstration projects throughout the 4-year demonstration period. A Risk Management Communications Plan is being developed that will describe the mechanisms OPS intends to have in place for providing demonstration project status and accepting stakeholder input. This communications plan will be published in the **Federal Register**.

OPS has screened the following three candidates, and has determined that they meet the criteria for participating with OPS in consultations about their proposals: Northwest Pipeline Corporation, Shell Pipe Line Corporation, and Tennessee Gas Pipeline Corporation/East Tennessee Natural Gas Company. Each company is working to develop an external

communication plan strategy that will ensure incorporation of input/concerns from all stakeholders into its demonstration project, both initially and throughout the 4-year demonstration period. Section II of this notice provides a summary of these companies' Letters of Intent. OPS has begun consultations with these companies.

Additional candidate companies will be screened after the July 25 deadline for submission of Letters of Intent. Summaries of their Letters of Intent will be published in subsequent **Federal Register** notices. This phased approach to scheduling consultations allows OPS to better manage workload.

II. Letter of Intent Summaries

1. *Northwest Pipeline Corporation (Northwest):* Northwest operates approximately 3,900 miles of interstate natural gas transmission line running through six western states, with endpoints at Ingacio, Colorado and the Canadian border at Sumas, Washington.

The pipeline traverses the densely populated regions of western Washington and Oregon through the agricultural areas of eastern Oregon, Washington and Idaho into the isolated areas of southwest Wyoming, Utah and Colorado. The route covers a variety of terrains from mountains to deserts, crossing numerous rivers and lakes, encountering very moderate to very extreme climates, and crossing national parks, Indian nations, wilderness areas, and habitats of numerous threatened and some endangered species.

While Northwest proposes to apply a risk management approach to its entire system, the company plans to limit regulatory exemptions to specified locations on the pipeline.

OPS is interested in entering into consultations with Northwest because its risk management program has the potential to:

- Explore means of assessing and addressing risks presented by a pipeline in rugged terrain susceptible to land movement;
- Investigate the risk-reduction benefits of certain new technologies; and
- Investigate new means of industry/government partnering to conduct cooperative pipeline research.

The proposed Northwest demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

- A location with diverse geographic features (the demonstration site traverses six western states: Washington, Oregon, Idaho, Wyoming, Utah, and Colorado);
- The identification of land movement as a significant risk issue for Northwest; and
- The opportunity to explore various regulatory approaches, from item-by-item approvals to approvals of risk-based decision processes.

Northwest's risk management program coordinator and point-of-contact is Molly McAnally. She can be reached at Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, UT, 84158–8800, or by calling (801) 584–6797.

2. *Shell Pipe Line Corporation (SPLC)*: SPLC operates nearly 8,000 miles of pipelines, transporting over 4.0 million barrels of oil, oil products, and carbon dioxide daily and employing over 700 people in 16 states.

SPLC is proposing portions of two separate interstate pipeline systems with different yet very distinct risk characteristics as its demonstration project: one transporting ethylene, a flammable, highly volatile liquid (HVL) that becomes a slightly lighter-than-air gas when released to the atmosphere, and which, under certain conditions, could form an explosive vapor cloud until diluted/dispersed; the second transporting carbon dioxide, a non-flammable, inert, non-toxic liquid that becomes a heavier-than-air gas when released to the atmosphere, and which, under certain conditions, could become an asphyxiation hazard until diluted/dispersed. Both ethylene, a hazardous liquid, and carbon dioxide must comply with part 195 of the Code of Federal Regulations.

The first part of SPLC's proposed demonstration project consists of nearly its entire Texas-Louisiana 12″ Ethylene Pipeline System (approximately 205 miles of 250 miles), which transports chemical-grade ethylene between Shell Oil Products Company's Deer Park (Texas) Manufacturing Complex and its Napoleonville (Louisiana) transfer facility. Ethylene is a chemical feed stock which is used in the manufacture of plastics, anti-freeze, detergents and other consumer products. This proposed test area addresses risks concerning the operation of a 12-inch, HVL pipeline (and related facilities) at pressures between 1000 and 1400 psig, in the proximity to, and sometimes traversing, five areas with large and growing industrial/residential populations. SPLC has been the operator of the pipeline since its construction in 1979.

The second part of SPLC's proposed demonstration project consists of the northwestern half (approximately 260 miles) of its Cortez 30″ Carbon Dioxide Pipeline System which transports merchantable-grade carbon dioxide from Cortez, Colorado across New Mexico to Denver City, Texas (the demonstration segment terminates near Albuquerque, New Mexico). This carbon dioxide, in turn, is then used for tertiary oil recovery in the Denver City area. This proposed test area will assess the risks surrounding the operation of a 30-inch, carbon dioxide pipeline (and related facilities) at pressures between 1300 and 2200 psig, where it operates in proximity to five areas with small and growing residential populations. SPLC has been the operator of the pipeline since its construction in 1983.

For the test area included in the demonstration program, SPLC proposes a comprehensive risk management program that will assess all hazards and risks associated with operation of these pipelines.

OPS is interested in entering into consultations with SPLC because its risk management program has the potential to:

- Explore resource reallocation from lower-risk carbon dioxide pipeline to higher-risk ethylene;
- Evaluate the effect on public safety and environmental protection caused by resource reallocation within an individual pipeline system, based on the constantly changing set of internal (i.e. pressure) and external (i.e. population) conditions; and
- Employ the risk management communications initiative to improve third-party damage prevention and emergency response coordination.

The proposed SPLC demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

- The commodities (ethylene and carbon dioxide);
- The location (the demonstration sites cross several southwestern states, including Colorado, New Mexico, Texas, and Louisiana);
- Technical/regulatory issues (SPLC is considering operating a section of the carbon dioxide pipeline at a higher pressure than is currently allowed by the regulations); and
- Policy issues (the allocation of resources between high and low risk pipelines, and between high and low risk sections on the same pipeline).

Fred Fischer, Manager, Technical Operations Support, leads SPLC's designated Risk Management team and serves as the central information contact for the program. He can be reached at Shell Pipe Line Corporation, Two Shell

Plaza, PO Box 2648, Houston, Texas, 77252, or by calling 713–241–0461.

5. Tennessee Gas Pipeline Corporation/East Tennessee Natural Gas Company (Tennessee/East Tennessee): Tennessee/East Tennessee are subsidiaries of El Paso Natural Gas Company of Houston, Texas. Tennessee Gas operates a total of 14,574 miles of both onshore and offshore pipeline, while East Tennessee Natural Gas operates 1,149 miles of onshore pipeline.

Tennessee/East Tennessee proposes to apply a risk management approach to its entire system. The company proposes modifying or eliminating compressor station relief valve testing and inspection under certain conditions, extending from 18 months to 24 months the time it is allowed to confirm or revise maximum allowable operating pressure due to class location changes, reducing the inspection frequency under certain conditions of certain emergency valves and regulators, and using new design criteria for increased system efficiency.

Tennessee/East Tennessee has also specified locations in western Pennsylvania, central Tennessee, and offshore Louisiana where it proposes altering maximum allowable operating pressure to suit local conditions.

The company believes superior safety can be achieved by enhanced damage prevention, increased patrolling, the use of internal inspection tools, and the reallocation of funds to re-habilitation projects on its higher risk pipeline segments.

OPS is interested in entering into consultations with Tennessee/East Tennessee because its risk management program has the potential to:

- Provide examples of data collection and analysis tools for supporting risk management; and
- Provide examples of how companies can use risk management to re-allocate resources to re-habilitation projects and other high value safety activities.

The proposed Tennessee/East Tennessee demonstration project also has the potential to help OPS examine the benefits of risk management as a regulatory alternative under a variety of conditions because of the following distinguishing features:

- Consideration of worker safety as well as public safety in risk assessment;
- Examination of the risk control potential of a number of existing regulations;
- The use of risk-based arguments for establishing MAOP; and
- The breadth of the demonstration site (which includes four OPS regions: Southern, Eastern, Central, and Southwest; and 17 states).

Tennessee/East Tennessee's risk management program coordinator and point-of-contact is Daron Moore. He can be reached at Tennessee Gas Pipeline Company, PO Box 2511, Houston, TX, 77252–2511, or by calling (713) 757–4023.

Issued in Washington, DC on July 22, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–19664 Filed 7–24–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 378X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Grays Harbor County, WA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by Burlington Northern Railroad Company [1] of a 1.18-mile line of railroad referred to as the South Aberdeen trackage between mileposts 1.82 and 3.00 in South Aberdeen, WA, subject to environmental conditions and standard labor protective conditions.

DATES: The exemption will be effective August 24, 1997 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27 [2] and requests for interim trail use/rail banking under 49 CFR 1152.29 [3] must be filed by August 4, 1997; petitions to stay must be filed by August 11, 1997; petitions to reopen must be filed by August 19, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–6 (Sub-No. 378X) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1925 K St., N.W., Room 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Decided: July 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19652 Filed 7–24–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. Because the petition for exemption was filed and the record was largely developed before the merger, we will continue to use Burlington Northern Railroad Company in the case title.

[2] See Exempt. Of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), for regulations in effect at the time of filing of the exemption petition. We note that the ICC Termination Act of 1995 has made changes and additions to the previous law regarding the processing of abandonments and OFAs. To implement these changes, we have issued final rules in Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996) (effective on January 23, 1997), modified, STB served June 27, 1997 (to be effective July 27, 1997). Because we have processed the exemption petition under the former regulations, we will continue to use those regulations in this proceeding to process an OFA, if one is filed.

[3] At the request of the City of Aberdeen, WA, a notice of interim trail use (NITU) will be issued under 49 CFR 1152.29. Also, a public use condition will be imposed on the transaction under 49 CFR 1152.28.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–468 (Sub–No. 2X)]

Paducah & Louisville Railway, Inc.; Abandonment Exemption; in White Plains and St. Charles, KY

Paducah & Louisville Railway, Inc. (P&L) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 8.50 miles of its line of railroad between milepost J–146.0 at White Plains and milepost J–154.5 near St. Charles, in Hopkins County, KY.[1]

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of August 25, 1997. However, because the verified notice was filed on July 7, 1997, consummation

Continued

The line traverses United States Postal Service Zip Codes 42442 and 42464.

P&L has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 26, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by August 4, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 14, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: J. Thomas Garrett, E.V.P. & General Counsel, 1500 Kentucky Avenue, Paducah, KY 42003.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

P&L has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 30, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), P&L shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by P&L's filing of a notice of consummation by July 25, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: July 17, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19654 Filed 7–24–97; 8:45 am]

BILLING CODE 4915–00–P

should not have been proposed to take place prior to August 26, 1997. Applicant's representative has been contacted and has confirmed that the correct consummation date is on or after August 26, 1997.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

[4] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33427]

The Burlington Northern and Santa Fe Railway Company; Trackage Rights Exemption; Union Pacific Railroad Company

Union Pacific Railroad Company has agreed to grant local trackage rights to The Burlington Northern and Santa Fe Railway Company over approximately 1 mile of rail line between milepost 601.5 and milepost 602.5 in Casper, WY, for the purpose of serving the facility of Black Hills Bentonite, LLC.

The transaction was expected to be consummated on July 21, 1997.[1]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33427, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: Michael E. Roper, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Decided: July 18, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–19653 Filed 7–24–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Under 49 CFR 1180.4(g)(1), a notice of exemption is effective 7 days after it is filed. Although applicant indicated that the proposed transaction would be consummated on July 21, 1997, because the notice was filed on July 15, 1997, the proposed transaction could not be consummated before the July 22, 1997 effective date.

Corrections

Federal Register
Vol. 62, No. 143
Friday, July 25, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE030-1008a; FRL-5856-1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware-General Conformity Rule

Correction

In rule document 97–18569 beginning on page 37722 in the issue of Tuesday, July 15, 1997, make the following correction:

On page 37722, in the third column, in the **DATES** section, in the third line, ''September 14,'' should read ''August 14,''.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS21-1-9718a; MS22-1-9719a: FRL-5857-5]

Clean Air Act Approval and Promulgation of Revisions to the Mississippi State Implementation Plan (SIP)

Correction

In rule document 97–18571 beginning on page 37724 in the issue of Tuesday, July 15, 1997, make the following correction:

On page 37726, the ''EPA Approved Mississippi Regulations'' table should read:

EPA APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
APC–S–1—Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
*	*	*	*	*
Section 3	Specific Criteria for Sources of Particulate Matter.	09/21/96	July 15, 1997.	
*	*	*	*	*
APC–S–5—Regulations for the Prevention of Significant Deterioration of Air Quality				
All	.....	09/21/96	July 15, 1997.	

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[CGD 95-062]

RIN 2115-AF26

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW)

Correction

In rule document 97–16109 beginning on page 34506 in the issue of Thursday, June 26, 1997, make the following corrections:

1. On page 34512, in the second column:

a. In the fourth line, ''NMDs'' should read ''(MMDs)''.

b. In the first complete paragraph, in the 12th line ''taken'' should read ''take''.

2. On page 34515, in the first column:

a. In the first complete paragraph, in the third line, ''IMB'' should read ''IMO''.

b. In the second complete paragraph, in the second line, ''course'' should read ''courses''.

c. Under the heading **Simulators**, in the first paragraph, in the nineth line, ''Graduated studies'' should read ''Graduate Studies''.

3. On page 34519, in the second column, the entry listed as ''(8) Integration of pilot into bridge team'' should appear as the third paragraph.

4. On page 34521, in the second column, in the third complete paragraph, in the fifth line, ''OSS'' should read ''QSS''.

5. On page 34524, in the third column, in the third line from the bottom ''base'' should read ''basic''.

6. On page 34525:

a. In the first column, in the second complete paragraph, in the second line, ''addressed'' should read ''addresses''.

b. In the second column, in the fifth line from the bottom, ''SRCW'' should read ''STCW''.

§ 10.202 [Corrected]

7. On page 34530, in the first column:

a. In § 10.202(k)(2), in the fifth line, ''36, CFR'' should read ''46, CFR''.

b. In § 10.202(l)(1), in the second line ''201'' should read ''2101''.

§ 10.551 [Corrected]

8. On page 34532, in § 10.551, in the second and third lines, ''Engineer authorizes'' should read ''Engineer (OSV) authorizes''.

§ 12.01-3 [Corrected]

9. On page 34534, in § 12.01-3(b), in the sixth line, ''Albert Embankment,'' should read ''4 Albert Embankment,''.

§ 12.05-3 [Corrected]

10. On page 34537, in the first column, § 12.05-3(c), in the seventh line, ''II/44'' should read ''II/4''.

§ 12.05-7 [Corrected]

11. On page 34537, in the second column, § 12.05-7(a)(5), in the seventh line ''II/44'' should read ''II/4''.

§ 12.10-7 [Corrected]

12. On page 34537, in the third column, § 12.10-7:

a. In the sixth line, ''law:'' should read ''law;''.

b. In the tenth line, ''craft rescue boats'' should read ''craft and rescue boats''.

§ 12.15-7 [Corrected]

13. On page 34538, in the first column, in § 12.15-7(c):

a. In the sixth line, ''drive'' should read ''driven''.

b. In the third line from the bottom, ''provide'' should read ''prove''.

BILLING CODE 1505-01-D

Federal Register

Friday
July 25, 1997

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.

Longshoring and Marine Terminals; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S–025]

RIN 1218–AA56

Longshoring and Marine Terminals

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its Safety and Health Regulations for Longshoring and those parallel sections of its Marine Terminals Standard. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring Standard) and landside operations at marine terminals (the Marine Terminals Standard). The comprehensive revisions to the Longshoring Standard essentially rewrite that standard for the first time since it was adopted in 1971 under Section 6(a) of the Occupational Safety and Health Act, while the amendments being made to the Marine Terminals Standard will provide consistency with the language of the new Longshoring Standard. The changes that OSHA is making to both standards are part of OSHA's continuing efforts to reinvent its workplace regulations to keep them current with evolving work practices and to reduce inconsistencies in regulatory requirements. Although the longshoring and marine terminal rules are ''vertical'' standards that apply only to longshoring and marine terminal activities, OSHA has also made minor changes to some of the general industry provisions referenced within these rules. These changes, which are non-substantive, have been made to conform the general industry requirements to the terminology used in the marine cargo-handling environment.

This final document contains requirements for the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear and other cargo handling equipment such as conveyors and industrial trucks; access to vessels; entry into hazardous atmospheres; working surfaces; and use of personal protective equipment. Additionally, OSHA addresses specialized longshoring operations such as containerized cargo, logging, and roll-on/roll-off (Ro-Ro) operations.

The principal hazards this rule addresses are injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres. OSHA also addresses those hazards posed by more modern and sophisticated cargo handling methods, such as intermodalism.

DATES: Effective Dates: This rule becomes effective on January 21, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 21, 1998.

Compliance: Start-up dates for specific provisions are set in §§ 1917.43(f)(3), 1917.71(f)(4), 1918.11(a) (1) and (2), 1918.24(d), (f)(1), and (g), 1918.62 (h)(5)(ii), 1918.65(d)(4) and (g), 1918.85(j)(1)(1) and (ii), 1918.86(g), and 1918.98(b)(1). However, affected parties do not have to comply with the information collection requirements in § 1917.25 (g) warranty of fumigated tobacco, § 1917.26(d)(7) labelling of stretcher closets, § 1917.50(i)(2) labelling of cargo handling gear, § 1917.71(f)(4) marking of trailers, § 1918.22(g) labelling gangway hazards, § 1918.74(i)(1) tagging ladders, § 1918.61(b)(2) labelling gear, § 1918.86(g) labelling trailers, and § 1918.94(b)(3) maintenance of air sampling results, until the Department of Labor publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Comments: Interested parties may submit comments on the information collection requirements for this standard until September 23, 1997.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, as the recipient of petitions for review of the standard.

Comments on the paperwork requirements of this final rule are to be submitted to the Docket Office, Docket No. ICR97–3, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the final Longshoring and Marine Terminals Standards and Information Collection Request, contact OSHA's WebPage on Internet at http://www.osha.gov/ under Standards.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Liberatore, Director of the Office of Maritime Safety Standards, or Paul Rossi, Project Officer, Office of Maritime Safety Standards, Occupational Safety and Health Administration, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219–7234.

SUPPLEMENTARY INFORMATION: The principal author of this final rule is Paul Rossi, Directorate of Safety Standards Programs, with editorial assistance from Joseph Daddura, Michael B. Moore and Odet Shaw of the Directorate of Safety Standards Programs and Paul Bolon of the Directorate of Policy; the economic analysis was developed by Paul Bolon and Clarinda Giddings of the Directorate of Policy; and James Estep of the Office of the Solicitor provided legal assistance.

General

The preamble to the final rule on the Longshoring and Marine Terminals Standards discusses the events leading to the final rule, the Summary of the Final Economic Analysis and Regulatory Flexibility Analysis, and the rationale behind the specific provisions set forth in the final Standard. The discussion follows this outline:

I. Background
II. Pertinent Legal Authority
III. Review of General Industry Standards for Applicability to Longshoring Operations
IV. Summary and Explanation of the Final Rule
V. Other Issues
VI. Summary of the Final Economic Analysis and Regulatory Flexibility Analysis
VII. Environmental Impact
VIII. Recordkeeping and Paperwork Requirements
IX. State Plan Requirements
X. Federalism
XI. Unfunded Mandates

I. Background

Because of the high number and serious nature of accidents occurring to port employees in the United States, Congress, in 1958, amended the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*) to provide a large segment of port-based employees with a safer work environment. The amendments (Pub. L. 85–742, 72 Stat. 835)

significantly strengthened section 41 of the LHWCA (33 U.S.C. 941) by requiring employers covered by that Act to ''furnish, maintain and use'' equipment, and to establish safe working conditions, in accordance with regulations promulgated by the Secretary of Labor. Two years later, in 1960, the Labor Standards Bureau (LSB) of the Department of Labor issued the first set of safety and health regulations for longshoring activities as 29 CFR part 9 (25 FR 1565). LSB amended these standards several times between 1960 and 1971. Since 1971, there have been no substantive changes to these provisions.

The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 650 *et seq*.), which established the Occupational Safety and Health Administration (OSHA), granted the Secretary of Labor the authority for two years to adopt, under section 6(a) of the Act, ''any established Federal standard'' as an OSHA standard. OSHA adopted the Longshoring Standard, then codified as 29 CFR part 1504, under section 6(a) in 1971, and recodified the standard as 29 CFR part 1918.

The longshoring industry has changed dramatically since 1971. The methods of cargo handling and the equipment associated with those methods have undergone significant modification. Vessels designed specifically for the carriage of intermodal containers, vehicular rolling stock, and even barges, are now the most common types of ships calling at U.S. ports. By contrast, the existing Longshoring Standard was designed largely for activities using methods and equipment that have since been overshadowed or replaced by more modern methods of cargo handling. The final rule will modernize OSHA's regulatory approach to deal with these changes in the industry. However, because some older, more conventional vessel types, equipped with features and aspects addressed in the existing standard, continue to call at U.S. ports, the Agency will retain in this final rule several provisions whose utility, although diminished, continues on a more limited scale.

On July 5, 1983, OSHA published its final rule for Marine Terminals (48 FR 30886) (Ex. 1–101). OSHA issued the Marine Terminals rule to address the shoreside segment of marine cargo handling operations. Since the Marine Terminals Standard currently addresses equipment and situations (i.e., powered industrial trucks, conveyors, passage between levels and across openings, etc.) that have shipboard counterparts, appropriate provisions from the Marine Terminals Standard were incorporated into this rulemaking for shipboard cargo handling as well. Accordingly, the Agency relied upon background material and data used to support OSHA's Marine Terminals Standard and incorporated the docket (Docket No. S–506) developed in that rulemaking into the record of this rulemaking.

OSHA published a Notice of Proposed Rulemaking (NPRM) for Longshoring and Marine Terminals on June 2, 1994 (59 FR 28594). As part of the NPRM, OSHA announced three public hearings to be held in Charleston, SC on September 20, 1994; Seattle, WA on October 19, 1994; and in New Orleans, LA on November 15, 1994. Later, OSHA published a notice of correction changing the dates of the hearings and announcing the specific hearing sites. Hearings were held October 4–6, 1994 in Charleston, SC; October 19–21, 1994 in Seattle, WA; and November 15–17, 1994 in New Orleans, LA. Administrative Law Judge Stuart A. Levin presided at the hearings. After receipt of all evidence and testimony, the record was closed on May 15, 1995.

This final rule will provide continuity for the cargo handling industry because it addresses both the more conventional and time-proven methods of cargo handling and more modern and innovative approaches. In keeping with OSHA's commitment to clarity, flexibility, and in order to encourage employers to comply with these standards, OSHA has adopted the performance approach except in those cases in which employee safety would be enhanced by more specific requirements.

Longshoring Hazards

Traditionally, the longshore industry, which is classified within Standard Industrial Classification (SIC) 449, has been notable in terms of its accident experience. The work environment found in marine cargo handling exposes employees to a greater risk of injury than is true for most other industries. In fact, in 1993, the last calendar year for which full tables of industrial illnesses and accidents are currently available, this industrial sector had one of the highest rates of lost workdays in the nation. The following data, shown in Table A below, came from Bureau of Labor Statistics reports (Exs. 1–109, 1–110, 1–111, 1–112, 1–113, 1–154, and 1–155), and are useful in making a comparative assessment:

TABLE A—RATE OF TOTAL LOST WORKDAY CASES

Total lost workday cases (rate per 100 full time employees)	1989	1990	1991	1992	1993
Private sector overall	4.0	4.1	3.9	3.9	3.8
Construction	6.8	6.7	6.1	5.8	5.5
SIC 449	9.1	7.8	8.5	6.1	7.1

Thus, serious job-related injuries have continued to occur in the marine cargo handling industry at an unacceptably high rate. Based on this historical injury data, OSHA concludes that regulatory action is necessary to meet its mandate under the Act. The standards being published today, which were developed by OSHA with substantial input from labor and industry representatives from the marine cargo handling industry, have been developed specifically to address the principal causes of these illnesses, injuries, and fatalities.

II. Pertinent Legal Authority

The purpose of the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq*. (''the Act'') is to ''assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. (See 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and federal standards within two years of the Act's enactment), 655(b) (authorizing promulgation of standards pursuant to notice and comment), 654(b) (requiring employers to comply with OSHA standards).)

A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8).

A standard is reasonably necessary or appropriate within the meaning of section 652(8) if it substantially reduces or eliminates significant risk, and is economically feasible, technologically feasible, cost effective, consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency actions, supported by substantial evidence, and is better able to effectuate the Act's purposes than any national consensus standard it supersedes. See 58 FR 16612–16616 (March 30, 1993).

The Supreme Court has noted that a reasonable person would consider a fatality risk of 1/1000 to be a significant risk, and would consider a risk of one in one billion to be insignificant. *Industrial Union Department* v. *American Petroleum Institute,* 448 U.S. 607, 646 (1980) (the ''Benzene decision''). So a risk of 1/1000 (10^{-3}) represents the uppermost end of a million-fold range suggested by the Supreme Court, somewhere below which the boundary of acceptable versus unacceptable risk must fall. The Court further stated that ''while the Agency must support its findings that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is significant will be based largely on policy considerations.'' See, e.g. *International Union, UAW* v. *Pendergrass,* 878 F.2d 389 (D.C. Cir. 1989) (formaldehyde standard); *Building and Constr. Trades Department, AFL–CIO* v. *Brock,* 838 F.2d 1258, 1265 (D.C. Cir. 1988) (asbestos standard).

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. *American Textile Mfrs. Institute* v. *OSHA* 452 U.S. 490, 513 (1981) (''*ATMI*''), *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir 1991) (''*AISI*'').

A standard is economically feasible if industry can absorb or pass on the cost of compliance without threatening its long term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI,* 453 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (''*LOTO III*'').

All standards must be highly protective. See 58 FR 16614–16615; *LOTO III,* 37 F.3d at 668. However, health standards must also meet the ''feasibility mandate'' of section 6(b)(5) of the Act, 29 U.S.C. 655(b)(5). Section 6(b)(5) requires OSHA to select ''the most protective standard consistent with feasibility'' that is needed to reduce significant risk when regulating health hazards. *ATMI,* 452 U.S. at 509.

Section 6(b)(5) also directs OSHA to base health standards on ''the best available evidence,'' including research, demonstrations, and experiments (29 U.S.C. 655(b)(5)). OSHA shall consider ''in addition to the attainment of the highest degree of health and safety protection * * * the latest scientific data * * * feasibility and experience gained under this and other health and safety laws.'' *Id.*

Section 6(b)(7) of the Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing and other information gathering and transmittal provisions (29 U.S.C. 655(b)(7)).

III. Review of General Industry Standards for Applicability to Longshoring Operations

Among the work environments OSHA regulates, the marine cargo handling industry ranks high in terms of the number of hazards that are not adequately addressed by OSHA's general industry regulations (29 CFR part 1910). Longshoring is essentially a transport industry and, as such, is free from some of the hazards found in general industry such as those associated with woodworking machinery, spray painting, power presses, and so on. On the other hand, many hazards that are common in longshoring, such as those posed by falling loads and working on the top of intermodal containers, are less common in other types of workplaces.

The Longshoring Standards (part 1918) were designed to deal with these and other unique hazards encountered in marine cargo handling. Where the standards in part 1918 did not provide coverage of hazards encountered in longshoring they were supplemented by the applicable General Industry Standards. This final rule updates and revises OSHA's existing Longshoring Standard (29 CFR part 1918) but continues to rely on OSHA's General Industry Standards (29 CFR part 1910) to address a number of hazards and operations that are not unique to longshoring. The applicable standards from part 1910 are cross-referenced in the final rule. Examples of such provisions are the toxic and hazardous substances requirements from subpart Z of 29 CFR part 1910 (with an exception for intact or sealed cargo and the Bloodborne Pathogens Standard), and 29 CFR part 1910 subpart T, which addresses commercial diving operations. In other instances, such as when addressing container and roll-on roll-off (Ro-Ro) operations, OSHA has developed new regulatory language specifically to address the hazards posed by these specialized operational aspects of modern stevedoring. This approach is similar to the one followed by OSHA in developing its Marine Terminals Standard (part 1917) for shoreside cargo handling promulgated in 1983.

In many situations, shipside cargo handling (i.e. longshoring) hazards are directly parallel to those encountered in shoreside cargo handling (i.e. marine terminals), such as hazards requiring the use of personal protective equipment and risks associated with the handling of intermodal containers. One of the goals of this rulemaking effort has been to provide consistent coverage of these hazards, regardless of whether the cargo handling is shipside or shoreside. Accordingly, in drafting its revised provisions for longshoring (part 1918), OSHA incorporated similar language into the Marine Terminals Standard (part 1917).

IV. Summary and Explanation of the Final Rule

This section discusses the important elements of the final standard, explains the purpose of the individual requirements, and explains differences between the final rule, the proposed rule, and existing standard. Issues raised in the public hearings and in written comments to the standard's docket are presented and summarized. The Agency also presents its discussion of the issues and its reasoning for specific determinations. References in parentheses are to exhibits and transcript [1] pages in the rulemaking record.

In developing the final rule the Agency actively worked with the marine cargo handling industry to build a consensus among labor and management with OSHA. This was possible because the marine cargo handling industry is relatively small and well-defined. In addition, a high percentage of employees are represented by labor unions. Employers are also well-organized into employer groups at each port and in each of the four major port regions of the country—East Coast,

[1] CH—Transcript of the hearings held in Charleston, SC, October 4, 5, 6, 1994.

SEA—Transcript of the hearings held in Seattle, WA, October 19, 20, 21, 1994.

NO—Transcript of the hearings held in New Orleans, LA, November 15, 16, 17, 1994.

West Coast, Gulf Coast, and Great Lakes and Inland Waterways. Drafts of the 1994 proposal were circulated to key stakeholders, and many issues were resolved before the proposed rule was published. As a result, there was considerable support for the proposed regulation.

General comments of support such as ''supports OSHA efforts to promote workplace safety'' or ''strongly supports revision'' were expressed by several commenters (Exs. 19, 6–20, 6–21, 6–35, and 6–44). Many commenters submitted statements to the effect that they ''wholeheartedly endorse'' the comments submitted by the National Maritime Safety Association (NMSA) in Ex. 8–20. These commenters, who wished to go on record as concurring with the views expressed by the NMSA in Ex. 8–20 are represented by Exs. 6–6, 6–7, 6–8, 6–9, 6–11, 6–12, 6–13, 6–14, 6–15, 6–16, 6–17, 6–27, 6–32, 6–34, 6–35, 6–36, 6–39, 6–40, and 6–43. Another group of commenters submitted statements to the effect that they concurred with the Pacific Maritime Association's (PMA's) written comments, which were submitted as Ex. 8–8. These commenters are represented by Exs. 6–7, 6–27, 6–32, 6–34, 6–40, and 6–43. Accordingly, throughout this preamble, whenever reference is made to ''Ex. NMSA *et al.*'', the citation reflects the written comments received from NMSA and those commenters listed above that supported NMSA. The same applies to exhibit ''Ex. PMA *et al.*'' which refers to PMA's comments and those of the commenters that supported the PMA. This condensed referencing technique streamlines the document.

A. 29 CFR Part 1910—General Industry

In the proposal (59 FR 28594 *et seq.*), OSHA proposed a number of editorial changes to several provisions of part 1910 (the General Industry Standards being incorporated by reference into the Longshoring Standard) to make the application of the General Industry Standards to the Longshoring and Marine Terminals Standards clearer. OSHA received no substantive comments on the proposed editorial changes to the General Industry Standards. Accordingly, these editorial revisions have been made in the final rule.

Paragraphs (a) and (b) of § 1910.16, *Longshoring and Marine Terminals*, have been updated and revised editorially. The definition of a ''marine terminal'' (§ 1910.16(b)(4)) has been amended to be consistent with the revised definition in § 1917.2(u). The Marine Terminals Standard preamble, which follows, has a detailed explanation of this definitional change.

B. 29 CFR Part 1917—Safety and Health Regulations for Marine Terminals

1. *Non-substantive changes.* In the proposal, OSHA proposed numerous revisions to provisions in OSHA's existing Marine Terminals Standard (29 CFR part 1917) that were considered non-substantive. These changes were widely supported by commenters. For the purposes of this final regulation, OSHA has divided these changes into two categories: correction of typographical errors [2] and changing the phrase ''shall be available at the terminal'' to ''shall be made available for inspection''.[3] The paragraphs affected by each type of change are identified in the appropriate footnote below.

OSHA had proposed deleting the introductory phrase ''the employer shall ensure'' from various requirements to correct technical drafting amendments from the final Marine Terminals Standard published on July 5,1983 (48 FR 30886). These paragraphs included: §§ 1917.18(a), 1917.43(e)(1)(i), 1917.44(o)(3)(ii), 1917.44(o)(4), 1917.126(b), 1917.152(f)(1), 1917.152(f)(2), and 1917.152(f)(3)(iv).

However, after the June 2, 1994, publication of the Longshore and Marine Terminals proposal, OSHA compliance staff reported that deletion of this phrase in other standards actions (e.g. 61 FR 19547) had caused difficulty in connection with the employer's obligation to have employees wear personal protective equipment (PPE). Therefore, OSHA is retaining this language in the current part 1917 paragraphs noted above. For the sake of clarity and consistency, the word ''required'' (which is used extensively in parts 1917 and 1918) and the word ''ensure'' shall be synonymous for compliance purposes.

In keeping with the Agency's efforts to develop regulatory language that is more ''user-friendly'' and easier to follow, the references to part 1910 (OSHA's General Industry Standards) in § 1917.1(a) have been renumbered and placed in alphabetical order.

2. *Substantive changes made in both parts 1917 and 1918.* OSHA proposed substantive, identical changes to OSHA's existing part 1917 (the Marine Terminals Standard) and part 1918 (the Longshoring Standard) to provide consistency between them. The rationale for these changes to part 1917 can be found in Section IV of this preamble, *Summary and Explanation of the Final Rule*, at the respective part 1918 section discussion. The following table (Table B, Parallel Changes in parts 1917 and 1918) lists the sections or paragraphs changed in part 1917, along with the sections or paragraphs in part 1918 in which parallel changes were made:

TABLE B—PARALLEL CHANGES IN PARTS 1917 & 1918

Part 1917 sections/paragraphs	Part 1918 sections/paragraphs
§ 1917.22 (hazardous cargo).	§ 1918.89
§ 1917.24(a) (carbon monoxide).	§ 1918.94(a)(1)(ii)
§ 1917.25(a) (fumigants).	§ 1918.94(d)
§ 1917.26(c) (first aid)	§ 1918.97(c)
§ 1917.26(d) (stretchers).	§ 1918.97(d)
§ 1917.27(a)(2) (personnel).	§ 1918.98(a)(2)
§ 1917.30 (emergency response).	§ 1918.99
§ 1917.42(g)(2)(vi) (slings criteria).	§ 1918.62(g)(2)(vi)
§ 1917.45(f)(5) (crane glass).	§ 1918.55(b)(1)
§ 1917.45(j)(2) (cranes).	§ 1918.66(c)(2)
§ 1917.45(j)(9) (riding the load).	§ 1918.85(h)
§ 1917.50(c)(5) (special gear).	§ 1918.61(f)
§ 1917.51 (hand tools)	§ 1918.69
§ 1917.71(f) (vertical lifts-containers).	§ 1918.85(f)(1)(i)
§ 1917.71(b)(6) (autos in containers).	§ 1918.85(b)(6)
§ 1917.73(a)(2) (menhaden).	§ 1918.94(f)(4)
§ 1917.91(a)(1) (eye protection).	§ 1918.101(a)(1)
§ 1917.93(b) (head protection).	§ 1918.103(b)
§ 1917.94(b) (foot protection).	§ 1918.104(b)
§ 1917.95(b)(2) (PFDs).	§ 1918.105(b)(2)
§ 1917.124(c)(5),(6) (dockboards).	§ 1918.25(a)(4)
§ 1917.124(d)(1),(5) (ramps).	§ 1918.25(b)(5)
§ 1917.127(a)(1) (sanitation).	§ 1918.95(a)(1)
§ 1917.151 (machine guarding).	§ 1918.96(e)

3. *Substantive changes only in part 1917.* OSHA also has made several substantive changes to the Marine Terminals Standard that have no

[2] Sections 1917.13(g); .17(i), (j), (k); .20; .23(b)(1), (d); .27(a)(2); .42(d)(2), (h)(4), (j)(1); .44(a), (i), (o)(3)(i); .45, (f)(4)(iii), (f)(5)(i), (f)(7), (f)(13)(ii), (i)(5), (j)(1)(iii)(D); .48(d)(2); .71(c); .112(a)(1); .118(d)(2)(i), (f)(2); .119(b)(1), (d)(2), (f)(4); .121(b)(3); .156(b)(3)(iii)(D); .157(n).

[3] Sections 1917.24(d), 1917.25.(c), 1917.42(b)(4), 1917.42(c)(1), 1917.42(d)(1), 1917.42(h)(4), and 1917.42(h)(5).

parallel in the Longshoring Standard. These changes are discussed in the following paragraphs. In final subpart A, Scope and Definitions of the Marine Terminals Standard, SHA has updated and clarified the scope, applicability, and definitions sections of the Marine Terminals Standard. The Marine Terminals Standard (part 1917) covers all shoreside activities taking place within a marine terminal (48 FR 30891) except those that are specifically exempted in §§ 1917.1(a)(1) and 1917.2(u). It is OSHA's intent that the marine cargo handling standards (part 1917 for shoreside and part 1918 for shipboard) apply to all functions that are associated with the movement of cargo. However, the current marine terminal definition (§ 1917.2(u)) includes a geographical as well as functional test to be applied when determining when the Marine Terminals Standard, rather than the General Industry Standards applies. Section 1917.1(a), entitled ''Scope and applicability,'' is worded as follows in OSHA's existing Marine Terminals Standard:

> The regulations of this part apply to employment *within* a marine terminal as defined in § 1917.2(u), including the loading, unloading, movement or other handling of cargo, ship's stores or gear within a marine terminal or into or out of any land carrier, holding or consolidation area, *or any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment.* (Emphasis added)

The definition of ''marine terminal'' in the existing standard is as follows:

> ''Marine terminal'' means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or contiguous areas and structures associated with the primary movements of cargo or materials from vessel to shore or shore to vessel including structures that are devoted to receiving, handling, holding, consolidation and loading or delivery of waterborne shipments or passengers, *including areas devoted to the maintenance of the terminal or equipment.* The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal nor does the term include storage facilities directly associated with those production or manufacturing areas. (Emphasis added)

OSHA received comments to the effect that the relationship of the work being performed to cargo handling operations should determine whether an activity is included within the scope of the Marine Terminals Standard, not the location where the work is being performed. For example, the National Maritime Safety Association (NMSA) stated,

> Additional language should be added to allow gear and maintenance shops located off-terminal to fall under the scope of 1917. Even though the same workers perform the same job tasks in both shop locations, the off-terminal shops must [currently] comply with the rules found in 1910. In many cases, the local Port Authority will not allow shops to be located on their terminal so the Stevedore or Marine Terminal operator has no choice but to locate off-terminal. As long as work performed in off-terminal shops is the same as work performed in shops located on-terminal and is primarily in support of Longshoring or Marine Terminal operations, the same rules should apply to both locations. (Ex. 8–20)

OSHA finds merit in this recommendation, and no views to the contrary were presented. There is no geographical limitation to maritime jurisdiction on shore other than the limitation of the Act itself, and it is not OSHA's intent to impose an artificial geographic boundary through the standards-setting process. The controlling test should be whether the operation is associated with the primary movement of cargo. If maintenance of terminal equipment is performed within the limitations of OSHA's marine cargo handling rules, then part 1917 applies regardless of where the ''terminal'' gate exists. In the final standard, OSHA has therefore relaxed the language suggesting a strict geographical test. In § 1917.1(a) of the final rule, the first sentence of the term ''marine terminal'' is changed to read: ''Marine Terminal means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidation and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment * * *''. In addition, for purposes of clarity, the phrase, ''having their own docking facilities and located at a marine terminal,'' is deleted in the final rule. This deletion does not change the intended effect of this definition.

Another marine terminal-related scope issue was previously addressed by OSHA after publication of the final Marine Terminals Standard in 1983. In 1984, OSHA and the National Grain and Feed Association (NGFA) came to a settlement agreement that identified those provisions of the Marine Terminals Standard (part 1917) that are generally applicable and those that are not applicable at marine terminal grain elevators. (For a copy of the agreement, see Ex.1–156.) In the present rulemaking, OSHA has made no substantive changes to those sections of the Marine Terminals Standard that were part of this agreement. For information purposes, OSHA is providing the following excerpt (Table C) from the 1984 agreement that lists the provisions of the Marine Terminals Standard (part 1917) that are generally not applicable to marine terminal grain elevators:

TABLE C—PROVISIONS GENERALLY INAPPLICABLE TO MARINE TERMINAL GRAIN ELEVATORS

Part 1917 Section	Subject
.13	Slinging
.14	Stacking of Cargo and Pallets
.15	Coopering
.17(c),(d)(1), (f),(h)&(k)	Railroad Facilities
.18	Log Handling
.22	Hazardous Cargo
.23	Hazardous Atmospheres and Substances
.41	House Falls
.43(g)&(h)	Powered Industrial Trucks
.46	Crane Load and Limit Devices
.48(b),(c), (d)&(e)	Conveyors
.49(e)&(g)	Spouts, Chutes, Hoppers, Bins and Associated Equipment
.71	Terminals Handling Intermodal Containers or Roll On Roll Off Operations
.73	Terminals Handling Menhaden and Similar Species of Fish
.114	Cargo Doors

TABLE C—PROVISIONS GENERALLY INAPPLICABLE TO MARINE TERMINAL GRAIN ELEVATORS—Continued

Part 1917 Section	Subject
.115	Platforms and Skids
.124	Passage between Levels and across Openings
.153	Spray Painting

Proposed § 1917.25(g), which concerned tobacco that has been loaded into containers and then fumigated prior to loading the container onto a vessel, required that the contents of the container be aerated by opening the container doors for a 48-hour period after fumigation and before loading. The proposed requirement also stipulated that the aeration period be extended to 72 hours in cases where the bag liners of the cases in which the tobacco is shipped are made of polyethylene or similar material. The proposal required that employers obtain a warranty from the fumigator stating that the aeration period had been met. This requirement differs from the fumigated tobacco issue addressed in subpart I of part 1918, which applies to cargoes that are break-bulk such as bales or hogsheads (§ 1918.94(c)). Tobacco cargoes, both imported and exported, are shipped most typically in bales, in hogsheads, and in intermodal containers. Thus, § 1917.25(g) applies to tobacco that is fumigated while it is in containers but before it is loaded into the vessel.

In determining the appropriateness of required aeration intervals, OSHA is relying on documents from the U.S. Department of Agriculture and the Tobacco Association of the United States. The studies reported in these documents concluded that intermodal containers loaded with fumigated tobacco required an additional 48 to 72 hours of aeration to be free of hazardous fumigant levels, depending on whether or not the tobacco is within shipping cases having polyethylene or similar bag liners (Exs. 1–70, 1–95).

Comment was received on proposed § 1917.25(g); commenters asked OSHA to delete the proposed requirement for a 48-hour aeration period for fumigated tobacco that is loaded into containers before those containers are loaded on a vessel (Exs. 6–1, NMSA *et al.*):

> NMSA feels that the words ''and prior to loading'' should be deleted from the end of the first sentence. Aeration of fumigated containers aboard ship is a common practice that has been in effect for many years. Continuing this practice will result in a delay in cargo delivery and disrupt vessel sailing schedules. (NO Tr. p.150)

OSHA has determined that the studies and data supplied by the U.S. Department of Agriculture and the Tobacco Association which show that 48-and 72-hour aeration periods are necessary to reduce fumigant levels to non-hazardous levels in containers without and with polyethylene lined bags, respectively, are more compelling than the evidence submitted by these commenters. Accordingly, § 1917.25(g) of the final rule remains the same as proposed and requires employers to provide the appropriate aeration period for tobacco that is fumigated in a container prior to loading.

In § 1917.45(f)(5)(ii), OSHA proposed to require seat belts for the operators of high speed container gantry cranes.[4] This new proposed requirement would have allowed a 90-day phase-in period for the installation of the seat belts. Comment was received that supported the requirement for seat belts but requested that a 180-day phase-in period be given to allow more time to purchase and install the necessary equipment (Exs. 6–1, 6–16b, 6–31a). The majority of U.S. marine terminals are owned by quasi-governmental organizations (i.e., port authorities). Typically, major capital equipment such as container gantry cranes are owned and maintained by the aforementioned quasi-governmental organizations. In order to allow sufficient time to accommodate government budget cycles, OSHA has concluded that a 180-day phase-in period is appropriate and has written § 1917.45(f)(5)(ii) of the final rule accordingly.

Paragraph (a)(1) of § 1917.46 of the existing and proposed Marine Terminals Standard, crane load and limit devices, requires all cranes, except those specifically exempted, to be equipped with a load indicating device. OSHA received one comment (Ex. 82) requesting that overhead cranes used in marine terminals be included in the types of cranes exempted from this requirement. This commenter pointed out that overhead cranes are similar to bridge-type container gantry cranes, which are exempted from this requirement, in that the load capacity of the crane is the same regardless of the actual position of the load. In other words, the load capacity of the crane does not depend on a boom that can change radius (and thus the load capacity); it is this factor that makes a load indicating device necessary. OSHA agrees with this commenter, and final rule § 1917.46(a)(1)(viii)(A) specifically exempts overhead cranes from the requirement to have a load indicating device.

C. 29 CFR Part 1918—Safety and Health Regulations for Longshoring

Subpart A—Scope and Definitions

This subpart updates and clarifies the scope, applicability, and definition sections of the Longshoring Standard.

Section 1918.1 Scope and application

The Longshoring rules apply from the foot of the gangway up to the vessel and address all activities related to cargo handling aboard the vessel. This means that ship-to-shore/shore-to-ship cargo transfer operations using shore-based material handling devices and all lifting device-specific aspects of such transfers will be covered by the Marine Terminals Standard (29 CFR part 1917). When cargo handling is accomplished using ship's cargo gear, the Longshoring Standard (29 CFR part 1918) applies.

This final rule has been written to stand by itself, i.e., to be a ''vertical standard.'' Vertical standards are those that apply to a specific industry and address the hazards present in that industry. For industries such as longshoring, the vertical standards in part 1918 are intended to provide comprehensive coverage of the hazards in an industry and make it unnecessary for employers in that industry to refer to, or comply with, most other OSHA standards. However, in several areas of coverage, OSHA's General Industry Standards have been incorporated into the Longshoring Standard by reference, and these 29 CFR part 1910

OSHA's attention is directed to document number 1, earlier submitted into evidence by NMSA. This document contains a copy of a letter from the United States Environmental Protection Agency to Soil Chemicals Corporation, permitting containers under fumigation to be transferred onto and off of ships.

Also in the document is a letter from the California Department of Pesticides regulation accepting this practice.

[4] High speed container gantry cranes are those capable of hoist speeds of 360 feet per minute (110 m/min) (without a load) and trolley speeds of 500 feet per minute (152 m/min) or faster.

incorporations are listed in paragraph (b) of the final rule's scope and application section. This approach follows the approach taken by OSHA in its other marine cargo handling standard, the Marine Terminals Standard, 29 CFR part 1917 (48 FR 30886). The Agency is incorporating by reference the General Industry Standards (from 29 CFR part 1910) that are needed to supplement the specific marine cargo handling provisions in the Longshoring Standard. The incorporation-by-reference approach is an efficient means of providing coverage for those hazards that are not unique to the marine cargo handling industry. This idea was endorsed by many commenters (Ex. NMSA *et al.).* For example, in his testimony at the October 20, 1994, Seattle hearing, Mr. Hank Bynaker, manager of environmental safety and health for American President Lines, stated '' . . . I would like to recognize OSHA's efforts to modernize their approach and to support that effort.'' (SEA Tr. p. 295)

The following 29 CFR part 1910 General Industry Standard provisions will have application to longshoring operations, under § 1918.1:

(b)(1) Access to employee exposure and medical records. Subpart Z, § 1910.1020;

(b)(2) Commercial diving operations. Subpart T;

(b)(3) Electrical. Subpart S when shore-based electrical installations provide power for use aboard vessels;

(b)(4) Hazard communication. Subpart Z, § 1910.1200;

(b)(5) Ionizing radiation. Subpart Z, § 1910.1096;

(b)(6) Noise. Subpart G, § 1910.95;

(b)(7) Nonionizing radiation. Subpart G, § 1910.97; and

Note: Exposures to nonionizing radiation emissions from commercial vessel radar transmitters are considered hazardous under the following situations: (a) where the radar is transmitting, the scanner is stationary, and the exposure distance is 19 feet (6 m) or less; or (b) where the radar is transmitting, the scanner is rotating, and the exposure distance is 5 feet (1.8 m.) or less.

(b)(8) Respiratory protection. Subpart I, § 1910.134.

(b)(9) Toxic and hazardous substances. Subpart Z applies to marine cargo handling activities except for the following:

(A) when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements; [5]

(B) Bloodborne pathogens, § 1910.1030;

(C) Carbon monoxide, § 1910.1000 (See § 1918.94 (a)); and

(D) Hydrogen sulfide, § 1910.1000 (See § 1918.94 (f)).

These subparts and sections of OSHA's General Industry Standards are also incorporated into the Marine Terminals Standard (§ 1917.1(a)(2)) by reference along with several other part 1910 sections that have application only in a marine terminal. Incorporating the same General Industry Standards into the Longshoring and Marine Terminals Standards will make both of OSHA's marine cargo handling rules similar with respect to these issues, an approach that has long been advocated by the marine cargo handling industry and is supported by this record.

OSHA's Bloodborne Pathogens Standard (29 CFR 1910.1030) does not apply to marine cargo handling operations. OSHA will continue its past policy of applying the first aid requirements of §§ 1917.26 and 1918.97. In a letter dated July 31, 1992, to the National Maritime Safety Association, OSHA addressed the coverage of the Bloodborne Pathogen Standard to the marine cargo handling industry. It states, in pertinent part, as follows:

* * * the bloodborne pathogen standard primarily applies to general industry establishments and not the cargo handling industry that N.M.S.A. represents. (Ex. 6–158).

Bloodborne pathogens are most commonly encountered in the cargo-handling environment during a first aid response when an injured employee is bleeding. Under these circumstances, first aid, which encompasses universal precautions (procedures for handling human blood and certain human body fluids in a manner that prevents the transmission of infection), must be followed by first aid responders. For further guidance, particularly for small employers, OSHA has included a non-mandatory appendix, Appendix V, titled Basic Elements of a First Aid Training Program.

In addition, as was proposed, OSHA is exempting from subpart Z all sealed, intact packages or containers that meet the Department of Transportation (DOT) or International Maritime Organization (IMO) requirements. OSHA's existing Longshoring Standard contains no such exemption, although the existing Marine Terminals Standard (§ 1917.1(a)(2)(ii)) does. Packages and containers that are sealed present no exposure hazards to marine cargo handling employees, provided that such containment remains intact. In order for packages and containers to qualify for the exemption in § 1918.1(b)(9)(B), they must meet DOT or IMO requirements. This will ensure that exempted packages are properly packaged, and thus highly unlikely to expose workers to toxic or hazardous substances. Including the exemption for intact packages and containers in the final Longshoring Standard will thus make that standard consistent with the Marine Terminals Standard.

OSHA also proposed to incorporate various other provisions of the General Industry Standards into the Longshoring and Marine Terminals Standards. These included subpart P of 29 CFR part 1910, which covers hand and portable tools, 29 CFR 1910.120(q), which addresses emergency response to hazardous substance releases, and subpart O of 29 CFR part 1910, which covers machine guarding. At the time of the proposal, OSHA had made an initial determination that these general industry provisions provided more comprehensive coverage than the corresponding provisions of the Longshoring and Marine Terminals Standards. However, commenters did not support the incorporation of these general industry provisions, as discussed in detail below.

To ensure safe practices in the use of hand tools, in § 1918.1(b)(5), OSHA proposed deleting the current longshoring requirements for hand tools, § 1918.72, titled ''Tools,'' and replacing this section with the more comprehensive requirements of subpart P of 29 CFR part 1910, titled *Hand and Portable Powered Tools and Other Hand Held Equipment.* OSHA also proposed to incorporate the same general industry section into the Marine Terminals Standard (proposed § 1917.1(a)(2)(vii)). This approach was not supported by rulemaking participants, however. For example, the Pacific Maritime Association in their comments asserted that:

About the only hand tools used by longshoremen aboard vessels are hammer-hatchets, chain saws, hand saws, hydraulic wire cutters and manual wrenches. There is no need for OSHA to require the adoption of 1910 Subpart P that includes hand tools never used aboard vessels (Ex. 8–8).

This position was also voiced by several respondents (Ex. NMSA *et al.*). In addition, OSHA has re-examined its compliance history for marine cargo handling found in its Integrated Management Information System (which contains computerized data on all OSHA compliance inspection data,

[5] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

dating back to 1972). While citations were found for the provisions addressing the hazards associated with hand and portable power tools found in Parts 1917 and 1918, no such citations were found for Part 1910. After considering these comments and in light of the Agency's own enforcement data, OSHA has determined that the hand tool provisions in the Agency's existing Marine Terminals and Longshoring Standards do address the hand tool hazards present in marine cargo handling operations more effectively than would be the case if subpart P of the General Industry Standards were incorporated by reference. Accordingly, the final rule does not incorporate these general industry requirements.

OSHA proposed to include from the General Industry Standards a paragraph from Subpart H, *Hazardous waste operations and emergency response,* § 1910.120(q), to address the issue of appropriate coverage of emergency response to hazardous incidents. This paragraph, essentially, requires employers to develop and implement an emergency response plan to handle anticipated toxic substance emergencies prior to the commencement of emergency response operations. If employers decide to evacuate their employees from the danger area when an emergency occurs and do not permit their employees to assist in handling the emergency, they are exempt from the requirements of this paragraph if they have provided an emergency action plan and met other requirements in accordance with § 1910.38(a).

The existing longshore and marine terminals regulations address the issue of responding to hazardous cargo spills in § 1917.22 (marine terminals) and § 1918.86 (longshoring). In general, these sections require the employer to remove employees from the area that the cargo has been spilled in, to determine the hazard involved, and to instruct employees in proper clean-up procedures.

Many commenters felt that adding this general industry provision duplicated the existing marine terminal and longshoring regulations discussed in the last paragraph (Exs. 6–29a, 6–39, NMSA *et al.*).

Mr. Richard Buonocore, Director of Safety for Matson Terminals, Incorporated and Matson Navigation Company, Incorporated, and Shore Side Operations, stated at the Seattle hearings:

> I also direct the Committee's attention to proposed 1918.89(a) and (c). These sections would repeat in the marine terminals rules existing sections 1917.22(a) and (c) from the longshoring rules. We're still with preparation for receiving hazard cargo and for responding to hazard cargo spills.
>
> We believe these proposals, both of which deal with hazard materials, awareness, and responses to hazard material incidents, are unnecessary because these subjects are adequately and appropriately addressed by other existing provisions.
>
> Emergency response plans were addressed in 1910.38(a), preparing for receipt of hazard cargos and dealing with spills are addressed in 1918.86(a) and (c).
>
> Hazard communications issues are addressed in 1918.90, particularly subpart (h), as well as in the general OSHA hazard communication standard of 29 CFR 1910.1200.
>
> Ventilation risks for particular hazard commodities are addressed by 1918.93.
>
> Perhaps most importantly in this regard is DOT's HAZMAT employee training rules, 49 CFR 172.204, which was alluded to by John Pavelko but not by citation number, requiring training on hazard material, risk, and emergency response.
>
> Under the DOT rules, all employees, including longshore personnel working with hazardous materials and transportation must be given awareness and safety training and must know how to recognize potential dangers and how to take appropriate actions to protect their personal safety in the event of a hazardous release (SEA Tr. pp. 218–219).

Mr. John Pavelko, the Pacific Maritime Association Coast Director for Training and Accident Prevention testified to the issue that the marine cargo handling industry does not do hazardous material clean-up:

> Again, the PMA members on the West Coast have an agreement that if there is an emergency, the emergency will be responded to by a professional vendor. Longshoremen will not be called to respond to any emergency.
>
> Under the HAZWOPER, the HAZWOPER, as you know, was designed for hazardous waste generators. It was for big time corporations that generate a lot of hazardous waste. The maritime industry just kind of got sucked into this thing by that one little sentence in there that says if there's going to be an emergency, then you've got to have a plan.
>
> Then if you don't respond to an emergency, then you've got to refer to, what was it, 1910.38. So all of our members fall under 1910.38 and not under the HAZWOPER, but yet when a compliance officer, on several—I shouldn't say several—on at least two or three occasions when compliance officers have come to the waterfront, they try to cite our employers under the HAZWOPER.
>
> We're saying, it's not us, it doesn't apply, and there's back and forth, back and forth, and this is another issue that causes a lot of problems for employers. (SEA Tr. pp. 189–190)

Mr. Ron Signorino, Director of Regulatory Affairs, Universal Maritime Service Corporation, testified in the New Orleans hearings:

> The HAZWOPER rule was written by OSHA in response to a mandate by Congress to have rules in place, whereby employees responding to an emergency situation could be protected from the hazards that are associated with that response.
>
> Now, the position of the National Maritime Safety Association has been traditionally that when employees employed by members of NMSA are aware of the spill that those employees be directed to evacuate any area in a spill, so that a professional team can come in and respond to that emergency, the professional teams are outside contractors who have no affiliation with the work.
>
> Typically, they're specialists in performing these clean-ups of these hazard emergency responses.
>
> Then, as a consequence, the provisions of HAZWOPER, rightly should not apply to employees who have, in fact, no exposure (NO Tr. p. 202).

OSHA agrees with the commenters that the HAZWOPER regulations are for those employers and employees that are in the business of cleaning up spills of hazardous chemicals and hazardous waste generators. However, if a marine cargo handling employer decides to respond to an emergency that is beyond the scope of the Emergency Action Plan developed by the employer in accordance with the final rule (§§ 1917.30 and 1918.100), that employer ceases to be acting in a ''marine cargo handling'' capacity and the appropriate sections of OSHA's General Industry Standards (e.g., 29 CFR 1910.120(q), HAZWOPER) would apply. This is reflective of the application of § 1910.120(q)(1) which reads in relevant part:

> Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a) of this part.

In the final rule, OSHA has decided to address these hazards by adding a new section to each of the Longshoring and Marine Terminals Standards. These new sections, which are identical, will alleviate the duplication and confusion that would be caused by the proposed cross-referencing of paragraphs from the Hazardous Waste Operations and Emergency Response Standard, § 1910.120(q), and from the Emergency Action Plans Standard § 1910.38(a). These new sections, which are codified in subpart B, Marine Terminal Operations (§ 1917.30), and subpart I, General Working Conditions (§ 1918.100), require marine terminal and longshoring employers, respectively, to develop a written (if there are 10 or fewer employees, oral

communication of the emergency action plan is acceptable) emergency action plan to handle anticipated emergencies of all types, including those involving fires and toxic substances, before the commencement of emergency response operations. These sections identify the basic elements of an emergency action plan (escape route planning, accountability, employer contacts); an alarm system; evacuation procedures; and training requirements. OSHA believes that, as a practical matter, the emergency action plan can be adequately communicated to a small group of employees of 10 or fewer when the requirements of the plan are orally explained; a written plan is therefore unnecessary in this circumstance.

OSHA proposed to protect marine cargo handling employees from the hazards of fixed machines by referencing the comprehensive list of machine guarding provisions contained in OSHA's General Industry Machine Guarding Standards (29 CFR 1910 subpart O) into the scope of both the Marine Terminals and Longshoring Standards.

The existing regulations address machine guarding in different ways. In the Longshoring Standard, machine guarding is addressed in several areas such as cargo winches (''When moving parts of winches or other deck machinery present a hazard, they shall be guarded,'' § 1918.53(a)(1)) and in powered conveyors (''All conveyor and trimmer drives which create a hazard shall be adequately guarded,'' § 1918.69(c)). In the Marine Terminals Standard, the existing regulations on machine guarding center around the ''danger zone'' concept. A ''danger zone'' is defined in the Marine Terminals Standard as any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock. The danger zone performance approach to machine guarding provides coverage of all hazards within the danger zone without the need to address each hazard separately. This approach also requires employers to use their judgment about which machine parts or areas at or near a machine do in fact expose employees to workplace hazards.

Several commenters noted that the existing danger zone concept used in the Marine Terminals Standard provided the necessary employee protection and that the proposed machine guarding provisions were unnecessary (Exs. 6–29a, 6–31a, 6–35). Other commenters favored the danger zone approach and stated that the machine guarding provisions in the General Industry Standards were voluminous and addressed several types of machinery that were not found in marine cargo handling operations (Ex. NMSA *et al.*).

Mr. Signorino addressed this issue during the hearings in New Orleans, testifying as part of a panel representing the National Maritime Safety Association:

> We adopt the approach that was originated by OSHA, implemented by that agency in the promulgation of the 1917 standards; and, in the space of time since the promulgation of those standards, has borne significance in terms of lack of accident experience, in terms of moving parts of machinery. That concept is, of course, the dangers [*zone*] (NO Tr. p. 413).

OSHA agrees with the above comments and testimony and in the final rule has decided that the same danger zone approach to machine guarding hazards pioneered in the Marine Terminals Standard (§§ 917.2(g) and 1917.151) will provide appropriate protection from machine guarding hazards in marine cargo handling operations regardless of location, i.e., in both marine terminal and longshoring operations. In addition, using the danger zone concept will allow employers some compliance flexibility. For example, although an unguarded nip point near an employee's work station will usually present a significant caught-in hazard, a nip point located 10 feet above the working surface is far less likely to present such a hazard.

Accordingly, the final rule does not incorporate subpart O of the General Industry Standards into the scope of the Marine Terminals and Longshoring Standards as proposed. Instead the final rule retains the existing machine guarding protections provided by § 1917.151 of the Marine Terminals Standard and brings these provisions into the final Longshoring Standard as § 1918.96(e). (Guidance on a wide range of machine guarding techniques and background information may be found in the OSHA pamphlet ''Concepts and Techniques of Machine Guarding'' (OSHA 3067–1992) or the American National Standards Institute (ANSI) publication ''American National Standard for Machine Tools'' (ANSI Bll.l9–1990).)

In keeping with the Agency's efforts to develop regulatory language that is easier to follow, the references to part 1910, OSHA's General Industry Standards in § 1918.1(b) have been renumbered and placed in alphabetical order.

Section 1918.2 Definitions

Final rule § 1918.2 carries over many definitions from the proposed and existing Longshoring Standards because those definitions are still relevant and are used in the final rule. However, some new definitions and modifications to existing definitions were proposed and have been added or made to reflect changes in current custom and practice in the longshore industry.

The existing rule's references to ''Federal maritime jurisdiction'' and ''navigable waters'' in the definitions of ''employee'' in § 1918.2 paragraph (e) and ''employer'' in paragraph (f) were not included in the proposal. The existing rules were originally promulgated under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), whose jurisdiction was limited to navigable waters. The promulgation of the OSH Act, which applies to private sector employment in covered workplaces, no longer uses navigable waters to establish jurisdiction. The final rule does not include these references.

New definitions or definitions that OSHA has revised substantially in the proposal or final are described below.

The definition of ''danger zone'' in the final rule is taken from OSHA's existing Marine Terminals Standard, as discussed above. This definition exists in the existing Marine Terminals Standard and is being added to the final Longshore Standard. OSHA finds it appropriate to include identical definitions of this term in the Marine Terminals and Longshoring Standards because various kinds of equipment that pose similar hazards to employees are present in both marine cargo handling environments.

OSHA proposed a new definition for ''designated person,'' which received considerable support (Ex. NMSA *et al.*, Ex. 6–22). This term has been incorporated in the final rule, and is defined to mean a person who has a special skill in a particular area and has been assigned by the employer to do a specific task in that area. Examples of the use of this term in the final Longshoring Standard are: § 1918.51(b) which requires that a designated person inspect a vessel's cargo gear before use and at intervals during use; and § 1918.55(c)(7) which requires that a designated person supervise tandem lifting operations.

The definitions for ''enclosed space'' and ''fumigant'' in the final are essentially unchanged from those proposed in the Longshore Standard. In

addition, these definitions are essentially identical to those found in the Marine Terminals Standard.

A definition for ''fall hazard'' has been added to the final rule in § 1918.2. According to the final rule, a fall hazard exists when employees are working within 3 feet of the unprotected edge of a work surface that is 8 or more feet above the adjoining surface and 12 inches or more horizontally from the adjacent surface, or when weather conditions are such as to impair the vision or footing of employees working on top of containers. This definition was proposed as a footnote to the container top fall protection section; however, because it has application in several other sections of the Longshoring Standard (§§ 1918.32, 1918.85, and 1918.87), it has been placed in the definitions section. The definition makes it clear that it is the unprotected edge that poses a fall hazard and not necessarily the entire work surface (except in bad weather or when ice, grease etc. is present so the entire surface may be slippery). Additionally, any gap of 12 inches (.31 m) or more on a horizontal surface formed by containers is considered an unprotected edge and would constitute a fall hazard under this definition. OSHA believes that any work within 3 feet (.92 m) of an unprotected edge constitutes a hazard (Ex. 1–139), providing that the second essential element of this definition exists, i.e. that the vertical distance is such as to constitute a fall hazard. In proposed § 1918.85(j), the Agency defined the fall height trigger at 10 or more feet above the adjoining surface. The final rule, however, sets the vertical height for fall hazards at 8 or more feet above the adjoining surface; this fall height is consistent with the fall height established in the final rule for non-containerized cargo (see § 1918.32(b)). The final trigger height of 8 feet is identical to the existing requirement for fall protection found in § 1918.32(b). OSHA believes that this height was originally adapted from an industry practice that pre-dated containerization. At that time, cargo was usually palletized into a standard 4 foot high pallet. It became an industry practice that whenever pallets were stacked two or more, the top working surface would be considered a fall hazard, thus requiring nets or other equivalent protection.

The definition of ''Hazardous cargo, materials, substance or atmosphere'' in the final longshore rule has been expanded to reflect the Marine Terminal Standard's definition of hazardous cargo. This definition goes beyond the existing part 1918 definition by including references to subpart Z of part 1910 and oxygen-deficient atmospheres.

The definition for ''intermodal container,'' which remains unchanged from the definition in the proposal, reflects a combination of definitions found both in the International Labor Organization (ILO) Code of Practice for *Safety and Health in Dock Work* (Ex.1–135) and the definition found in the International Standards Organization (ISO) Standard 830, Freight Containers-Terminology (Ex.1–134). The definition in the final rule more accurately describes an intermodal container than the definition that is in the existing rule. This updated definition is also in the Marine Terminals Standard at § 1917.2.

The definitions of ''dockboards'' and ''ramps,'' found in the existing Marine Terminals Standard, have been brought into the Longshoring Standard with minor editorial modifications.

The extensive list of definitions that were included in § 1918.3(r) of the existing Longshoring Standard that specifically refers to existing § 1918.13, ''Certification of shore-based material handling devices,'' has been deleted in the final rule. These definitions are no longer needed in the Longshoring Standard because part 1917, the Marine Terminals Standard, now contains OSHA's regulations for the certification of shore-based material handling devices.

The proposed definition for ''vessel's cargo handling gear'' had been modified by adding language to reflect cargo gear included under the ILO Convention 152. The final definition gives examples of the kinds of cargo handling gear that are included in this newer definition to reflect comments received that requested a more descriptive definition (Ex. 6–22).

For the sake of clarity and consistency, the word ''required'' (which is used extensively in parts 1917 and 1918) and the word ''ensure'' shall be synonymous for compliance purposes.

Subpart B—Gear Certification

Section 1918.11 Gear Certification

In OSHA's current Longshoring Standard, subpart B includes requirements for vessels' cargo gear certification, the certification of shore-based material handling equipment, and some provisions for gangways. The final rule's requirements for the certification of shore-based material handling equipment and for gangways are essentially unchanged from those in the current Longshoring Standard, although they have been moved from this subpart to the Marine Terminals Standard and to subpart C of the Longshoring Standard, respectively, as explained below. The final rule's requirements relating specifically to vessels' cargo gear certification, entitled ''Gear Certification,'' have been streamlined and are now consolidated in subpart B of the Longshoring Standard. The gangway requirements in subparts B and C of OSHA's existing Longshoring Standard have, in the final rule, been moved to subpart C ''Gangways and Other Means of Access'' (§ 1918.21). Furthermore, existing §§ 1918.13 through 1918.15, which covered shore-based material handling devices and container cranes, have been removed from part 1918 because shore-based handling devices are currently covered exclusively under part 1917, the Marine Terminals Standard. In the existing definitions section, § 1918.3(r)(5) (i) to (vi) listed material handling devices that were exempted from the certification requirements of existing § 1918.13. Section 1918.13 required that shore-based material handling devices be certified in accordance with part 1919, OSHA's gear certification regulations. As mentioned above, these requirements are now found in part 1917, the Marine Terminals Standard. Material handling devices are now exempted from certification only if they are listed in § 1917.50(h). Huletts, bridge cranes, ore and taconite loading facilities, and bulk coal loading facilities, which were exempted from certification under existing § 1918.3, are not exempted under existing and final § 1917.50.

Some commenters (Exs. 6–16a and NMSA *et al.*) urged OSHA to move the remaining regulations from subpart B of the Longshoring Standard to subpart F of that standard, ''Vessels's Cargo Handling Gear,'' on the grounds that doing so would consolidate all vessel cargo handling gear requirements into one section (Ex. 8–20). OSHA disagrees with this position because subpart B's vessel cargo gear certification requirements are procedural in nature, have international significance, and apply to all lifting appliances aboard the vessel, such as elevators and material handling equipment. In contrast, subpart F primarily addresses the specific operational requirements for cranes and derricks. Accordingly, the final rule continues to address vessel cargo gear certification in subpart B.

Section 1918.11 of the final rule, entitled ''Gear certification,'' requires employers to ensure that the vessel has a current and valid cargo gear register and certificates that are in accord with the recommendations of the International Labor Organization (ILO) Convention No. 152 as these pertain to

the testing and examination of cargo gear (paragraph (a)). Vessels holding a valid Certificate of Inspection from the U.S. Coast Guard (USCG) or public vessels are deemed to meet the requirements of paragraph (a). Paragraphs (c) and (d) of § 1918.11 specify the competencies that persons and organizations making entries and issuing the certificates required by paragraph (a) of this section must have, both with regard to U.S. vessels not holding a valid USCG Certificate of Inspection and vessels under foreign registry.

These requirements of the final rule are essentially unchanged from the corresponding provisions of the proposal. However, by requiring that vessel cargo gear be certificated in accordance with ILO 152 rather than ILO 32, OSHA is effecting a change from the Agency's existing Longshoring Standard.

Since 1960, safety and health regulations designed to protect U.S. dockworkers (with particular regard to vessels' cargo handling gear) have relied upon the documentary proofs of tests and examinations mandated by ILO 32 (Ex. 1–34). In Article 9 of that Convention, units and articles comprising ships' cargo handling gear are specified and assigned an annual/quadrennial schedule of tests/examinations that must be attended and attested to by individuals judged to be ''competent'' by the national authorities of the vessel's registry. Although not a signatory to that Convention, the United States has conformed to this Convention via regulations promulgated by: (1) the U.S. Coast Guard, regarding inspected U.S. flag vessels; and (2) OSHA, regarding foreign flag vessels (existing § 1918.12). The Coast Guard has promulgated cargo gear regulations that exceed those found in ILO 32, namely those codified at 46 CFR part 91, that promote safe and unencumbered operations for U.S. flag vessels trading at foreign ports. On foreign flag vessels trading at U.S. ports, however, OSHA has sole responsibility for regulating and enforcing rules that address the cargo gear U.S. longshore workers use.

Under ILO 32, proof load testing[6] was only required initially before gear was put into service. After that initial test, such gear received various degrees of visual scrutiny, supplemented occasionally by nondestructive testing, e.g., a hammer test. Components such as derricks, goosenecks, mast bands, derrick bands and any other difficult to disassemble fixed gear, were to be ''thoroughly examined'' every 4 years and ''inspected'' every 12 months. Other hoisting machinery, such as cranes, winches, blocks, shackles, and any other accessory gear, was to be ''thoroughly examined'' every 12 months.

ILO 152, adopted June 25, 1979, requires that proof load testing be conducted at least every 5 years, and applies to all ships' lifting appliances. Within Article 3 of ILO 152, the term ''lifting appliance'' means:

> Lifting appliance covers all stationary or mobile cargo-handling appliances used on shore or on board ship for suspending, raising or lowering loads or moving from one position to another while suspended or supported (Ex. 1–5, p. 2).

Thus, because the final rule requires compliance with ILO 152 instead of ILO 32, it expands testing and certification requirements for cargo handling equipment on board vessels. Such testing and certification, which was formerly restricted to specific assemblies and components (i.e., derricks, cranes, winches, etc.) will now include all ''lifting appliances'' as defined by the newer ILO Convention. This includes forklifts and other powered equipment used to handle cargo that might be carried by a Ro-Ro vessel, and elevators found on Ro-Ro vessels used to move cargo (including vehicles) from one deck level to another, in addition to the vessel's cranes and derricks. Under final rule § 1918.11, all of this equipment is required to be: tested and thoroughly examined initially before being put into use; retested and thoroughly examined every 5 years; and thoroughly examined every 12 months.

In 1993, OSHA received a letter from Sea-Land Service, Inc. requesting that OSHA interpret the current regulations to allow the lifting of two empty 40 foot ISO freight containers that are vertically coupled using semi-automatic twist locks (Ex. 1–161). OSHA's response allowed the practice under the existing regulations, provided that certain additional requirements were met (Ex. 1–160). However, the existing regulations, which reference Convention 32, did not require the certification of the ''lifting appliance,'' i.e., the top container and the semi-automatic twist locks.

In the preamble to the proposed rule, the Agency discussed differences between Convention 32 and Convention 152, including the requirement in the latter convention to certify lifting appliances. OSHA stated that, under Convention 152, when a container was used to lift another container, the top container would fall within the definition of ''lifting appliance'':

> In those situations where one container is used to lift another container, using twist locks, then the upper container and twist locks become, in effect, a lifting appliance and must be certified as such. Page 28602.

In response to this proposed interpretation of Article 3, paragraph (e) of ILO Convention 152, OSHA received comments only from the International Longshoremen's and Warehousemen's Union (ILWU) (Exs. 19, 6–19, and 78). Although these comments favored the proposed interpretation and requested the Agency to include it as a requirement in the regulatory text, they included no specific information regarding lifting containers vertically coupled. Furthermore, while Sea-Land Services, Inc. submitted a detailed six page comment (Ex. 1–6) addressing a number of the proposed changes to the Marine Terminals and Longshoring Standards, it did not address this issue. In addition, OSHA received a late, post-hearing submission from the International Longshoremen's Association (ILA) that indicated a serious problem with this type of lift, citing several incidents at U.S. ports where failures occurred (L–90a). While this letter cannot be the basis of rulemaking at this time since it is not part of the record, it has made OSHA aware of safety concerns that may need to be addressed by the Agency. The record contains a dearth of information regarding safety considerations associated with double container lifts, as well as feasibility information regarding certificating containers and twist locks as ''lifting appliances''. In light of this lack of information, OSHA has decided to reserve judgment on this issue, pending further study.

In the near future, OSHA will reopen the record on this narrow issue and publish a notice requesting specific information regarding whether or not OSHA should allow the practice of lifting vertically coupled containers, and, if so, under what circumstances. The notice will request information regarding the lifting of one container by another container using twist locks, including data on the following issues:

Have the bottoms of intermodal containers been designed and tested for the purposes of ''lifting''?

Have the twist locks been designed and tested for ''lifting''of containers?

What information do the manufacturers of containers and twist locks have regarding the use of their products as lifting appliances?

Do any international bodies currently certify containers and twist locks as ''lifting appliances''?

[6] Proof load testing, as used here, means lifting a known weight that is in excess of the safe working load (SWL) of the lifting appliance being tested.

Is there any scientific data that addresses maintenance testing and ''life'' of the components used for lifting purposes?

Has the impact of adverse weather conditions been evaluated in both design and operational concerns with regard to double container lifts?

What precautions can be taken to assure that the containers being lifted are empty?

What precautions can be taken to assure that the twist locks are all locked properly when the lifting occurs?

What precautions can be taken to assure that employees are not exposed to the hazard of a falling container?

What precautions can be taken to assure that defective or damaged containers should not be used to hoist other containers?

To what extent are lifts of vertically coupled containers currently being conducted and by whom?

How many containers and twist locks would have to be certificated for use as lifting appliances?

What would it cost to certificate the upper containers and twist locks for use as lifting appliances?

In vessel sharing agreements, is it feasible for upper containers and twist locks to be used as lifting appliances to be certificated?

What are the productivity gains, if any, associated with the lifting of vertically coupled containers?

What information, including anecdotal information is available on incidents involving vertically coupled containers that have fallen and hurt or killed employees or caused ''near-misses''?

Several commenters (Exs. NMSA *et al.*, NO Tr. pp. 388–393, 638–644) asked that OSHA continue to recognize and allow vessel's cargo gear on vessels whose cargo gear registers are in accordance with ILO 32 but not ILO 152:

* * * Refusal by stevedores to work vessels of nations that have not ratified ILO 152 will result in loss of business for the stevedore and terminal operator and can possible [sic] damage U.S. and foreign trade agreements. Until such nations of the world have ratified ILO 152, those still a signatory to ILO 32 should be recognized and accepted (Ex. 8–20, p. 4).

During the three public hearings held for this rulemaking, OSHA questioned witnesses about the difficulty posed by provisions requiring vessel's cargo gear to comply with the pertinent parts of ILO 152 (SEA Tr. pp. 276–278 and 333; NO Tr. pp. 388–394, 454–455, 638–642, and 712). Several commenters (NO Tr. pp. 638–642, 1391, and 1158) expressed concern that if OSHA requires vessel's cargo gear to meet ILO 152, vessels with cargo gear that does not comply will go to other countries to load and unload cargo that will then be brought into the United States by truck and rail, thereby having an adverse economic impact on the U.S. marine cargo handling industry. The two other countries that were of primary concern were Mexico and Canada. However, during the public hearings, it was pointed out by one witness that Mexico has ratified ILO 152 and Canada is expected to adopt the basics of ILO 152 in the near future (NO Tr. p. 627). (Also see the discussion in the section that follows, ''International Aspects.'')

OSHA recognizes that some vessels may need a longer phase-in period to comply with the ILO 152 cargo gear requirements. In addition, OSHA recognizes that the stevedore, who is the employer, does not own or have control of the vessels' cargo gear and thus must depend on the owner to accomplish the change before the stevedore can determine that the register is current and valid. Testimony by Mr. Mike Compton, Chair of the Safety Panel of the International Cargo Handling and Coordination Association (ICHCA), addressed the phase-in periods granted by the United Kingdom, for the ILO 152 cargo gear requirements. Mr. Compton stated:

* * * there were two lead-in periods given. For the change from a quadrennial to an annual thorough examination on derricks, there was one year given as a lead-in period.

The way in which this worked was that all of our member ports told their shipping company customers that this was going to happen in a year's time, and that in a year's time they would legally not be able to handle their derricks unless there was a thorough examination and record of it in the register within the last 12 months, and there was no problem with that. That ship owner had a year to see that was done.

With regard to the testing, which is now a new requirement of testing every five years, we gave a four-year lead-in time to that, which is more than enough time for a shipowner to ensure that the testing required was carried out.

Again, the member ports told their shipping company customers, who also heard about it in the course of their own trade associations, made appropriate requirements, arrangements, and there was no problem with that either (NO Tr. pp. 630–640).

OSHA finds Mr. Compton's recommendations persuasive and consistent with the goals of current International Trade Agreements.

Therefore, effective a year from the publication date of the final rule (§ 1918.11(a)(1)), all lifting appliances and all loose gear are required to have had a thorough examination that is duly recorded in a cargo gear register in accordance with ILO 152. Effective four years from the publication date of the final rule (§ 1918.11(a)(2)), all lifting appliances and all loose gear must have been tested (or retested) with the results duly recorded in a cargo gear register in accordance with ILO 152. At that time, vessels that do not have a cargo gear register that is properly filled out and up to date will be violating this regulation if the vessel's lifting appliances are used. However, in such cases, properly certified shore-based equipment may be used to load and unload the vessel.

A new paragraph, (a)(3), has been added to address these interim periods (up to one year for thorough examinations and up to four years for testing), vessels with cargo gear registers that are in accordance with ILO 32 will continue to be acceptable during these interim periods.

Several witnesses during the public hearings expressed concern that the cargo gear register forms required by ILO 152 were not readily available and that even if such forms were available, employers would have difficulty in reading and understanding them (SEA Tr. 277–278, NO Tr. pp. 651–655). In Appendix I of the proposed rule, OSHA provided a sample cargo gear register that came from the International Labor Organization's maritime office and conforms with ILO 152 requirements (See also Ex. 58). The sample register is in English and includes definitions and instructions on how to conduct the required inspections and/or tests and how to fill out the forms. Non-mandatory Appendix I, as proposed, is included in this final rule.

The International Cargo Gear Bureau, Inc. (Ex. 6–22), pointed out that although ILO 152 requires that proof load testing be done ''at least every five years,'' proof testing is often done and is required by some countries to be done every four years or even more frequently. The same commenter went on to say that this discrepancy should be clarified because four-year proof load testing is required in current §§ 1917.50(c) and current 1918.61(h). In addition, this commenter wrote:

If it is the intention of USDL/OSHA to adopt the five (5) year proof load testing cycle for shipboard cargo handling gear within the jurisdiction of USDL/OSHA, the justification for such relaxation of proof load testing requirements should be explained by USDL/OSHA considering the ''lost workdays'' statistics and statements on page 28595 of the June 2 **Federal Register** * * * (Ex. 6–22, p.4).

In the final rule, OSHA is not changing either the requirement at

current § 1917.50(c), which mandates a quadrennial proof load testing requirement for shore based material handling devices, or the requirement at current § 1918.61(h), which requires such testing for special stevedore gear. Instead, by requiring foreign vessels using ship's gear while working in the United States to comply with ILO 152, OSHA is providing greater protection to employees than is currently required, because compliance with ILO 152 requires inspection and testing of *all* lifting appliances, not just cranes and derricks, and requires retesting at least every five years. Thus, the final rule's vessel cargo gear certification requirements substantially increase employee protections.

One commenter wrote that OSHA should clarify in the rule what is meant by ''vessel's cargo handling gear'' because of the expanded requirements under ILO 152 (Ex. 6–22). OSHA modified the definition of ''vessel's cargo handling gear'' in the proposal to ''include all stationary or mobile cargo handling appliances * * *. '' and the final rule includes the same definition. OSHA has included a cross-reference to that definition in § 1918.11.

It should be noted that 29 CFR part 1919, provides procedures and standards governing accreditation of persons by OSHA for the purpose of certificating vessel's cargo gear and shore-based material handling devices, and the manner in which such certification shall be performed. Categories of competency have been established based on the equipment that they have been accredited to inspect. For example, a ''full function vessel'' accreditation would mean that the person or agency has been recognized as competent to inspect and certify all of a vessel's cargo handling equipment. Similarly, a ''loose gear and wire rope'' accreditation requires the showing of a different inspection competency. The inspection requirements of this subpart involve both of these categories.

With regard to these inspection requirements, several commenters wrote that paragraph § 1918.11(c) should be clarified by adding the term ''full function vessels'' to identify the type of accreditation that persons competent to make entries in the registers and issue certificates must have. (Exs. NMSA *et al.*, 6–16a). OSHA agrees with these commenters and has made the change in the final rule in both paragraphs § 1918.11(c) and (d). The words ''or loose gear and wire rope testing'' have also been added to identify those accredited agencies that can issue certificates for loose gear and wire rope that are part of the cargo gear register.

One commenter (Ex. 6–5) noted that OSHA's ''proposed rules are significantly more stringent than the existing Coast Guard regulations.'' The U.S. Coast Guard has rules covering marine terminals that handle bulk flammable liquids and gases. However, all employees engaged in longshoring operations, whether on U.S. flag or foreign flag vessels, are covered by OSHA's part 1918 regulations. These regulations cover forklifts and other powered industrial equipment. During this rulemaking, OSHA coordinated with, and received support from the Commandant of the U.S. Coast Guard (Ex. 6–44). OSHA believes that its final rule will provide longshoring and marine terminal employees with effective protection from the hazards of marine cargo handling.

The preamble section titled ''International Aspects,'' which was in the proposal, is repeated in this preamble to the final rule to explain why OSHA is retaining the provision (at § 1918.11(a)) that allows foreign flag vessels to comply with ILO gear provisions instead of requiring them to comply with U.S. standards. This issue was brought out in written comments and during the hearings (Ex. 6–22, NO Tr. pp. 454–455, pp. 650–651).

International Aspects:

As with all Federal agencies whose regulations influence international trade, OSHA has developed this final rule in light of international considerations. Through both law and policy, the United States has decided that standards-related activities should not, if possible, be a barrier to trade. The Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) addresses technical barriers to trade regarding federal regulation. Section 2532 of this Act states the following:

> Section 2532. Federal standards-related activities.
>
> No Federal Agency may engage in any standards related activity that creates unnecessary obstacles to the foreign commerce of the United States, * * *.
>
> (1) *Nondiscriminatory treatment.* * * *
>
> (2) *Use of international standards.* (A) In general, * * * each Federal agency, in developing standards, shall take into consideration International standards and shall, if appropriate, base the standards on International standards.

Additionally, and consonant with this country's position on barriers to international trade, the United States is a signatory to the Multilateral Convention on the Facilitation of International Maritime Traffic (1965) (Ex. 1–3). As a contracting government, the United States has agreed to:

> * * * Undertake to cooperate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic and keep to a minimum any alteration's informalities, documentary requirements and procedures necessary to meet special requirements of a domestic nature. (Article 3)

Mindful of these international aspects, OSHA sought to formulate an acceptable approach to the vessel's cargo handling gear issue, and to other issues. The Agency requested the Department of State (Ex. 1–7) to present OSHA's approach to all foreign nations whose vessels may enter U.S. ports. This exercise was conducted in the hope of identifying acceptance. Reports back from responding foreign nations (Ex. 1–6) indicated overwhelming support for the Agency's approach to these issues. Most of the nations responding, although stipulating that they had not yet ratified the more recent ILO Convention, suggested that their national laws recently ratified were at least as strong, and sometimes more stringent, than ILO 152. Thus, OSHA is confident that the cargo gear certification requirements of the final rule are consistent with those of ILO Convention 152 and national laws and practices of most other countries.

Subpart C—Gangways and Other Means of Access

In final rule subpart C, OSHA has organized requirements by subject matter and enhanced the uniformity of shoreside and shipboard requirements.

Subpart C is titled ''Means of Access'' in the existing and proposed Longshoring Standard. It contains requirements that employers must meet before allowing employees to board a vessel. Several commenters suggested that the title be changed to ''Gangways and Other Means of Access'' to better describe the contents of this subpart (Ex. 6–16a, NMSA *et al.*). These same commenters also recommended that this subpart be rearranged so that each section, such as Gangways, Jacob's ladders, etc., contains only the specific requirements that apply to the subject matter of that section. OSHA agrees with the recommended changes to the title and grouping of subjects in this subpart and has generally rearranged it accordingly.

The provisions of final § 1918.21 ''General requirements,'' are taken from the existing and proposed Longshoring Standards, with editorial changes made for clarity. In final § 1918.21(a), which requires that the means of access to the vessel not be located under suspended

loads to the extent possible, the words ''or others'' have been added after the word ''employees''. OSHA believes that suspended loads should not pass over a vessel's means of access, regardless of whose employees would be exposed to the hazards of overhead loads. While OSHA recognizes that the stevedoring employer may not have control over all employees (or users of the gangway), employers do have control over the movement of suspended loads and thus have the means to comply with this provision.

Final rule § 1918.21(b) stipulates that substantial steps and a minimum of one handrail be provided between the bulwark and deck when the upper end of the means of access rests or is flush with the top of the bulwark. This provision is unchanged from the corresponding provision of the proposal.

To eliminate the ambiguity of the current rule, which required that means of access be ''adequately'' illuminated, final paragraph 1918.21(c) references § 1918.92 which requires specific illumination levels. In addition, the final rule has a footnote that gives the candlepower requirement found in § 1918.92, to make it readily available in this section.

The title of § 1918.22, currently ''Gangways and other means of access,'' is being changed to ''Gangways'' in the final rule. The word ''gangways,'' as defined in § 1918.2, includes accommodation ladders, brows, etc. This section also joins two similar sections of OSHA's current Longshoring rules (§ 1918.11—titled ''Gangways'' and § 1918.21—titled ''Gangways and other means of access''). The final rule's § 1918.22, therefore, eliminates the need for employers and employees to look in different subparts for information on gangways.

Following the format of the current Longshoring Standard, gangway dimensions and characteristics are set out in paragraphs (a) and (b). Using a combination of specification language with performance-based alternatives, the final rule provides the flexibility needed in adapting to vessels built according to international guidelines. The final rule allows rails to be made of materials other than those specified in the current rule, if the material is at least equivalent in strength to those listed. Paragraphs 1918.22 (a) and (b) are essentially unchanged from the proposal.

Paragraph (c), which requires that the gangway be trimmed at all times, carries over language from the current rule, plus the term ''trimmed,'' a word that is also found in the Joint Maritime Safety Code of the New York Shipping Association/International Longshoremen's Association (NYSA/ILA Safety Code) (Ex. 1–2). This paragraph is designed to ensure, despite changing conditions caused by tides, cargo operations, etc., that the gangway and its components are fully useable at all times.

Final rule paragraphs (d), (f), (h), and (j) are essentially identical to the corresponding provisions of the current and proposed rules. They address fixed flat-tread accommodation ladders, handrails on walkways, and prohibitions against obstructions (paragraphs (d), (f), and (h), respectively), while paragraph (j) states that vessels inspected and certified by the USCG are deemed to meet the requirements of this section. Paragraphs (e), (g), and (i) have been editorially modified for clarity to address problems of interpretation associated with these provisions of the existing standard. Proposed paragraph (e) of the final rule has been revised to require a safety net or suitable protection when the gangway overhangs the water in a way that poses a danger of employees falling between the ship and the dock. The purpose of the net is to prevent an employee from falling to a lower level. This is consistent with ILO's ''Safety and Health in Dock Work'' (Ex. 1–138). Final rule paragraph (g) requires gangways to be kept clear of supporting bridles and other obstructions but allows that, in situations where gangway supporting bridles cannot be moved because of the design, the employer is to mark the hazard to alert employees using such a gangway. Paragraph § 1918.21(i) has been added to the final rule to address the hazard associated with slippery handrails and walking surfaces on gangways. Several commenters suggested the use of more performance-oriented language (Exs. 6–31, 8–20, NMSA *et al.*) than the proposal. OSHA agrees and has included the language suggested by the commenters in the final rule, which has been renumbered as § 1918.22(i).

Final rule § 1918.23, titled ''Jacob's ladders,'' carries over language from the current rule. Paragraphs (a) and (b) of this section contain criteria for rope ladders, also known as ''Jacob's ladders''. In keeping with the previously mentioned public comments regarding rearranging this subpart, two paragraphs, proposed as § 1918.23 (e) and (f), that address Jacob's ladders have been moved to become final rule § 1918.23 (c) and (d). Final paragraph (c) addresses the potential for the lower rungs of a Jacob's ladder to be crushed between the barge and another structure by requiring that a spacer or equivalent means be used to prevent this from occurring. Final rule paragraph 1918.23(d) requires that a net or equivalent protection be provided if there is a space between the vessel, barge, or other structure when using a Jacob's ladder; this provision is designed to prevent an employee from falling into the water or from being crushed between the barge and other structure. Such rope ladders are often provided by the vessel when more traditional means of access cannot be used. Nevertheless, the employer (who is often a contractor rendering a service to the vessel) must comply with the provisions of this section before employees are permitted to use Jacob's ladders.

Final rule § 1918.24 is a new section titled ''Fixed and portable ladders.'' This section was moved from proposed § 1918.25 ''Ladders,'' which included requirements for both fixed and portable ladders. For streamlining purposes, the final rule combines the requirements for portable ladders contained in the current Longshoring Standard with similar requirements contained in § 1917.119 ''Portable ladders.''

Generally, final § 1918.24 includes much of the current Longshoring Standard's language for ladders. Paragraph 1918.24(a) requires that a minimum of one ladder be provided for each gang working in a hatch and that an effective means of gaining a handhold be provided at or near the head of vertical fixed ladders. Paragraph (b) requires employers to identify ladders that are visibly unsafe and prohibit their use. Paragraph 1918.24(c) requires that portable straight ladders be sufficiently long to extend a minimum of 3 feet above the upper landing surface and be secured against slipping.

For fixed ladders, OSHA proposed to change the clearance required behind the ladder rungs from four inches (.11 m) to six inches (.16 m) on vessels built after December 5, 1981,[7] in order to be consistent with the recommendations of the ILO's Guide to Safety and Health in Dock Work (Ex. 1–129). In addition, OSHA's existing Longshoring Standard allows that where a fixed ladder has inadequate clearance, a suitable portable ladder could be used in its place, and the final rule continues to allow this practice. Two commenters addressed the issue of clearance. One commenter suggested that OSHA did not give adequate compliance time to vessel owners on this issue and stated that the

[7] This is the date when ILO Convention 152, Occupational Safety and Health in Dock Work, was put into effect.

six-inch (.16 m) requirement should apply to vessels only after a phase-in period or should apply only to vessels contracted for after the effective date of the final regulations (Ex. 6–5). The New York Shipping Association (NYSA) commented that using a permanent ladder with a four-inch (.11 m) clearance would be safer than using portable ladders (Ex. 6–16a). Although OSHA agrees with the NYSA comments overall, the Agency believes that a six-inch (.16 m) clearance is important to employee safety and OSHA also seeks to encourage conformance with the international guidelines. To address these commenters' concerns, however, OSHA is providing for a phase-in period before the six inch (.16 m) clearance requirement becomes effective. OSHA believes that this phase-in period will provide adequate time for the international shipbuilding community to include this requirement in its shipbuilding design criteria. On those vessels built on or after four years after the date of the publication of the final rule, fixed ladders must have six inches (.16 m) of clearance or more, or another means of access must be used. In the interim period, four inches (.11 m) of clearance is acceptable.

Provisions have been added to the final rule at paragraph (g) that reference ANSI standards for manufactured portable ladders. New provisions for ladder maintenance and usage similar to those found in the current Marine Terminals Standard have been added to the final Longshoring Standard in paragraph (i).

Final paragraphs (c) and (e) of § 1918.24 recognize that, as an alternative to securing the ladder, an employee(s) may hold a portable ladder in place while another employee is climbing. The final phrase reads ''positively secured or held against shifting or slipping while in use'' and is consistent with the PMA-ILWU Safety Code, Rule 1506 (Ex. 1–145).

In addition, to clarify final paragraph (e), where the employer can show that employees can safely use the cargo itself to climb in and out of the hold (often called ''safe cargo steps''), a straight ladder is not necessary.

Paragraph (f) of the final rule sets out the requirements for rung strength, spacing, and positioning, and establishes the widths between side rails required for ladders of various heights.

As mentioned above, paragraph (g) establishes standards for manufactured portable ladders by cross-referencing the appropriate ANSI requirements for portable wood ladders, portable metal ladders, and portable reinforced plastic ladders.

In paragraph (h) of the final rule, minimum requirements are set forth for job-made portable ladders. These requirements address between-rung distances, strength requirements, and width between side rail requirements.

The requirements in final rule paragraph (i) cover maintenance and inspection requirements for portable ladders. They identify the kinds of defects that require employers to take ladders out of service, either by tagging the ladder or removing it from the vessel. In addition, paragraph (i)(2) states that ladders must be inspected for defects before each day's use and after any event that could damage the ladder.

Paragraph (j), which includes provisions addressing ladder usage, acknowledges that while some ladders may not have slip-resistant bases, they can be positively secured against shifting or slipping while in use (paragraph (j)(2)). The language of this paragraph allows ''holding'' as an alternative to ''lashing'' to be consistent with paragraphs (c) and (e) of this section. Other provisions of paragraph (j) prohibit the use of single-rail ladders, the use of ladders as guys, braces, or skids, or as platforms, runways, or scaffolds. Other safety procedures and prohibitions are also included in this paragraph.

Final § 1918.25, which addresses bridge plates and ramps used to span the gap between the vessel and another vessel or the dock, combines the current language of the Longshoring Standard's provisions with the terms that apply to similar shoreside equipment (see § 1917.124). In the proposal, OSHA would have required sideboards that are at least six inches (.16 m) high. OSHA also proposed to require the same six inch (.16 m) sideboards for dockboards and ramps in the Marine Terminals Standard, § 1917.124(c)(5) and (d)(1). The six-inch height is the same as that for ''bull rails'' that were in place on the effective date of the Marine Terminals Standard (§ 1917.112). Bull rails, frequently railroad ties, are placed around the edge of the dock of a marine terminal and are used to prevent equipment from falling into the water. Based on the height requirement for bull rails in the Marine Terminals Standard, OSHA believed that six inch sideboards would prevent vehicles and equipment from accidentally falling off the edge of a bridge plate or ramp.

Several commenters expressed reservations about the six-inch sideboard requirement on the grounds that it was too high or was unnecessary (Exs. 6–16a, 6–29a, 6–31a, 6–36, 80, SEA Tr. pp. 171–172, 242–243, 385–389, 422–423, NO Tr. pp. 158–160, 164, 384–386). These commenters felt that six-inch sideboards on dockboards would create a tripping hazard, would interfere with forklift operations, or would fail to provide additional safety benefit. Other commenters (Exs. 6–29a, 6–36) suggested OSHA use ANSI Standard MH14.1 as a guide; that ANSI standard recommends a sideboard height of two and three-quarters of an inch. Others stated their preference that performance language and grandfathering of existing ramps would be appropriate (NO Tr. pp. 386, 432).

John Faulk of NMSA, at the public hearings in New Orleans, stated that bridged distances rarely exceed several inches in the industry (NO Tr. p.158). In addition, he said that there are thousands of ramps and bridge plates in the industry that would not meet the 6-inch height requirement and would thus require retrofitting with sideboards and noted further that there are no accident data to justify such a modification. In its post hearing comment, NMSA estimated that there were 35,000 ramps and bridge plates that would require modification under the proposal (Ex.80). NMSA estimated that it would cost $36 million to retrofit each of these ramps and bridge plates with sideboards.

After a thorough review of the record, OSHA concludes that six inches is an appropriate height for ''bull rails,'' but not for sideboards. As commenters noted, sideboards of that height could cause a tripping hazard and interfere with safe operations.

OSHA has reviewed the ANSI standard (MH14.1) and OSHA's proposed standard on *Walking/Working Surfaces and Protective Equipment (Fall Protection Systems)* (29 CFR 1910 subpart C) (55 FR 13360). In accordance with the ANSI standard and OSHA's proposal, when the space to be spanned is less than three feet (.91 m), no sideboard is necessary, because the space is not large enough to allow machinery such as a powered industrial truck to fall through. However, OSHA believes that sideboards, or some alternative, are necessary on dockboards and bridge plates spanning a gap greater than three feet. OSHA believes that three feet (.91 m) is a large enough opening to allow equipment to fall to a lower level, injuring the driver. In the final rule, OSHA has decided to use performance language similar to that in the proposed rule for *Walking and Working Surfaces and Protective Equipment (Fall Protection Systems)* (29 CFR 1910 subpart C) (55 FR 13360); thus, the final rule stipulates only that bridge and car plates be designed to

prevent vehicles from running off the edge (paragraph 1918.25(a)(4)) and that portable ramps be similarly designed (paragraph 1918.25(b)(5)). In addition, footnotes provide specification and compliance guidance on sideboard heights when the gap to be bridged is greater than 36 inches.

Paragraph (b) addresses portable ramps used afloat. Except for the requirement for sideboards, the final language remains the same as that proposed.

Final rule § 1918.26, *Access to barges and river towboats,* was numbered § 1918.23 in the proposal. This section has been treated separately in the final regulation because some barge operations, particularly those conducted in the Mississippi River system (see definition at § 1918.2), are unique.

Final rule paragraph (a) sets out criteria for ramps used to gain vehicular access to or between barges. Of primary importance is that such ramps be of sufficient strength for the intended load. Although the railings required by § 1918.25(b)(2) are not required on these vehicular ramps, as stated in paragraph (a), the ramps must be equipped with sideboards that will prevent vehicles from falling off the edge. Except for the railing requirement, ramps used for vehicle access to or between barges must meet all of the requirements of § 1918.25.

Final rule paragraph 1918.26(b) remains the same as proposed; it addresses employee passage to and from certain floating craft. Under favorable conditions, it is sometimes possible to pass to and from such vessels without the aid of any additional means of access. In unfavorable conditions, however, this paragraph sets forth the provisions required for safe passage. These range from a straight ladder to a Jacob's ladder or other safe means of access. Of significance is the exception that recognizes the practical difficulties that may be encountered on the Mississippi River system in providing traditional access. Historically (Ex. 1–98), this exception is based on tidal and current conditions on the Mississippi system.

Final rule paragraph (c) addresses the situation where a barge or raft is being worked alongside a larger vessel. Unless other safe means of access is provided, paragraph (c) requires a maximum of two Jacob's ladders for any single barge or raft being worked. This is consistent with the requirement in § 1918.24(a) that requires no more than two access ladders in a hatch. In final paragraph (c), the term ''gang'' is used to refer to a group of longshore workers assigned to a particular hold, deck, etc. on a ship to load or discharge cargo. The use of this term is consistent with its use elsewhere in this final rule.

Final rule paragraph (d) mandates that barges on which longshoring operations are taking place must be secured to the vessel, wharf, or dolphins. The purpose of this provision is to prevent workers from falling into the water while handling cargo.

Subpart D—Working Surfaces

Subpart D, Working Surfaces, addresses the hazards associated with slips, trips, and falls that are common causes of injuries in the marine cargo handling industry.

OSHA clearly understands that many hazards addressed by this and other subparts represent working environments and physical characteristics that are encountered much less frequently now than when the Longshoring Standards were last revised. This primarily is a result of the evolution of handling cargo in intermodal containers rather than as break bulk. However, OSHA believes those conventional break-bulk cargo handling methods, together with the more traditional vessel characteristics, such as a yard and stay cargo handling gear and hatches covered by hatch boards, are still encountered at U.S. ports. In the proposal, OSHA requested comment from the public on the issue of obsolete regulations, primarily those that addressed methods of cargo handling that are no longer used. OSHA also received testimony on this issue (SEA Tr. pp. 133–134).

It has been pointed out to OSHA, particularly at the West Coast public hearing, that ex-Soviet bloc vessels that were once not allowed to enter some United States ports, due to security reasons, are now allowed to enter. Some of these vessels have cargo handling gear and hatch coverings that had virtually disappeared from ports in the United States. In the final rule, OSHA is retaining many provisions that might otherwise have been considered obsolete because they still have application to these vessels. To illustrate, § 1918.31(d) prohibits the placing of poorly fitting hatch covers and hatch beams that would constitute a work surface. As a practical matter, seeing vessels at U.S. ports fitted out with hatch beams is rare. However, such situations do still arise.

Section 1918.31, ''Hatch coverings,'' (paragraphs (a), (b), (c), (d), and (e)) retains the same requirements as the current and proposed regulation, except that some editorial changes have been made for clarity.

Paragraph 1918.32, ''Stowed cargo and temporary landing surfaces,'' addresses surfaces used temporarily to load cargo, fall hazards posed by the edges of hatch sections or by stowed cargo, and fall hazards posed by gangs working on different levels of the hatch (paragraphs (a), (b), and (c), respectively). Paragraph (a) specifies that temporary surfaces used to land a load be of sufficient size and strength to allow employees to work safely, that edges of hatch sections or of stowed cargo be guarded by a safety net or equivalently protective means, and that employees working in the same hatch but at different levels be protected from falling by safety nets. The requirements in this paragraph are essentially identical to those in the existing rule and have only been modified minimally for clarity.

Final rule paragraph 1918.32(b) has been revised to address changes that have occurred in technology and work practices since OSHA's original Longshoring Standard was adopted. This paragraph does not apply to employees working on top of intermodal containers, whether above or below deck, because such work is now covered by Section 1918.85(j), ''Fall protection'' (for a more detailed discussion of this issue, see the preamble to § 1918.85(j), below). Instead, section 1918.32 applies when employees are working non-containerized cargo in the hold and are exposed to falls of more than eight feet (2.4 m); it requires that the edge of the working surface be guarded by a safety net or that other means of fall protection (such as guardrails or fall arrest systems) be used to prevent employee injury. This fall distance of 8 feet comes from the original Longshoring safety rules promulgated under the Longshoremen and Harborworker's Compensation Act (33 U.S.C. 901) in 1960 and is reflected in the existing rule. Rule 1016 of the Pacific Coast Marine Safety Code (PCMSC) (Ex. 1–145) is very similar to this paragraph, although the OSHA provision has been written to reflect a more performance-oriented approach. In addition, instead of specifying the precise fall distance, distance to the edge, and so forth that triggers fall protection in individual provisions, OSHA has defined the term ''fall hazard'' in the Definitions section (§ 1918.2). A discussion of the definition of ''fall hazard'' can be found in subpart A.

It is essential that employees satisfy the intent of this provision and do not merely appear to comply with it. Many times, particularly when safety nets have been rigged, they have been allowed to become very slack, and have

even in some cases been secured only at their top ends. The improper rigging of safety nets compromises or even removes the protection provided to falling employees.

This paragraph has also been revised to distinguish between the purpose and use of vertical safety nets, which rise at right angles at the perimeter of a work surface to prevent employees from falling, and trapeze nets, which are designed to be placed horizontally below a raised work surface to prevent falling employees from striking the surface below.

OSHA proposed to require that the safety nets specified in this section meet the requirements of ANSI A10.11, ''Personnel and Debris Nets.'' One commenter wrote:

> Rigging and testing nets under ANSI regs in maritime conditions may not be possible such as providing outriggers for horizontal distance. This regulation was written for long-term construction projects where nets can be rigged, tested and left in place. (Ex 6–36).

Commenters also pointed out that ships often supply the safety nets and that requiring a foreign vessel to provide a net that meets ANSI specifications may be difficult. Other commenters also opposed including the reference to the ANSI standard (Exs. 6–16a, 6–29a, 6–36, 8–8, 8–20). After considering the international implications of this provision as proposed, OSHA agrees with these commenters and has deleted the reference to ANSI A10.11 in the final rule. In its place, OSHA has added performance language suggested by the National Maritime Safety Association—''Safety nets shall be maintained in good condition and be of adequate strength for the purpose intended'' (Ex. 8–20).

The language in § 1918.32(c), which requires that gangs working at different levels of the same hatch be protected by nets from falling themselves or from being crushed by falling cargo, is unchanged from the proposed provision. However, because this paragraph, like paragraph (b), requires the use of safety nets, OSHA has included identical performance language in this paragraph, i.e. that ''Safety nets shall be maintained in good condition and be of adequate strength for the purpose intended.''

Final § 1918.33, titled ''Deck loads,'' addresses the safe performance of work on or around deck loads; it has been carried over from the current rule and the proposal and is unchanged in the final rule. It requires that employees be prohibited from passing over or around deck loads except where safe passage exists (paragraph (a)). This requirement is designed to protect employees from falling or being crushed by falling cargo. Paragraph (b) of the final rule requires employees giving signals to crane operators to have safe passage if they walk over deck loads from rail to coaming; absent such safe passage, this provision prohibits these employees from walking over deck loads. In situations where it is necessary for the employees giving signals to stand or walk at the outboard or inboard edge of a deck load having less than 24 inches (.61 m) of bulwark, rail, coaming, or other protection, those employees must be provided with fall protection equivalent to that provided by a safe passageway, i.e. with a guardrail, personal fall protection system, or other equally effective means.

Some commenters (Ex. NMSA *et al.*) recommended that OSHA not include this section in the final rule because, in their opinion, it is redundant with provisions in § 1918.32 and § 1918.91. However, OSHA does not agree with these commenters, because § 1918.32 addresses working below deck and section 1918.91 addresses housekeeping. Mr. Douglas Getchell, a member of the Pacific Coast Marine Safety Code Committee, International Longshoremen's and Warehousemen's Union, agrees with OSHA on this point; at the hearing, he testified that § 1918.32 and § 1918.91 only ''peripherally apply'' to conditions found when working deck loads. He stated that, since § 1918.33 is more specific to the subject, it should not be deleted (NO Tr. pp.246–250).

Final rule § 1918.34, ''Other decks,'' includes requirements to protect longshore workers from being injured while working on other decks, e.g. skeleton decks, mechano decks. Paragraph (a) prohibits the working of cargo on any deck that was not designed to support a load of the weight being worked, and paragraph (b) requires that grated decks be properly placed, supported, maintained, and designed to support employees; grated decks that do not meet this requirement may not be used to work cargo. OSHA proposed to change the title of this section of the existing rule, which is ''Skeleton decks,'' to ''Other decks'' and received support from commenters to make this change (Ex. 8–20, NMSA *et al.*). Accordingly, the final rule section is titled ''Other decks.''

Final rule §§ 1918.35 and 1918.36 address hazards longshore workers face when conducting operations around open weather deck hatchways or when weather deck rails are removed to conduct cargo operations. Vessels calling at U.S. ports are of varied designs and capabilities. Some vessels have coamings, which are the vertical structures that surround the hatch opening on a ship, that are much higher than the section 1918.35's minimum acceptable range (36 to 42 inches (.91 to 1.07 meters)), while other vessels may have no hatch coamings but have flush decks or decks with a short sill. Decks of the latter two types pose substantial fall hazards to longshore workers. Sections 1918.35 and 1918.36 require that, when employees work around the perimeter of open hatchways that are not protected to a height of 24 inches (.61 m) on vessels with low or no hatch coamings, appropriate guarding, such as that provided by taut lines or barricades, must be provided to a height of 36 to 42 inches (.91 to 1.07 m) on all but the working side of the hatch (§ 1918.35). Weather deck rails must be kept in place except when cargo is being worked, and they must be replaced after cargo operations are finished (§ 1918.36). These provisions were widely supported (Ex. NMSA *et al.*), and these sections are unchanged from the proposal.

Final § 1918.37, ''Barges,'' addresses the fall hazards associated with working on the decks of lighters and barges. Final paragraph (a) prohibits the use of marginal (less than three feet (.91 m) wide) deck space along the sides of covered lighters or barges on all such vessels having coamings more than five feet (1.5 m) high but allows an employer to provide, instead, a taut handline or a serviceable grab rail. Two commenters (Exs. 6–18, 6–42) asked OSHA to allow existing barges to be ''grandfathered'' from compliance with § 1918.37(a) on the grounds that ''Many barges currently in service do not meet the three-foot standard [the width for walkways]. Rather the walkways on these barges are only 18–24 inches in width'' (Ex. 6–18). OSHA is not providing such an exemption in the final rule because this requirement has been in place since the 1960's, and it allows considerable compliance flexibility, e.g. the use of a taut handline or a serviceable grab rail in lieu of a 3-foot wide walkway. This requirement is essentially identical to that proposed.

Final rule paragraph (b) prohibits working or walking on barge decks that have not been visually inspected to ensure that they are structurally sound and have been maintained properly. The visual check of such decks must be done before loading operations begin. If during discharge operations an unsafe surface is discovered, work must be stopped until protective measures are taken (such as bridging the unsafe surface with steel plate or barricading a deck section deemed unsafe). This provision is essentially unchanged from

the corresponding provision in the proposal.

Proposed § 1918.38, titled ''Log rafts,'' which was a new section in the proposal, has been moved to subpart H, ''Handling Cargo'' in the final rule. It has been combined with § 1918.88, ''Log operations,'' so that all requirements dealing with handling logs from the water are in the same section, as suggested by several commenters (Exs. 78, PMA *et al.*, SEA Tr. p. 397, pp. 410–411). A discussion of log rafts is found below in subpart H.

Subpart E—Opening and Closing Hatches

Final subpart E, titled ''Opening and Closing Hatches,'' remains very similar to the corresponding subpart of OSHA's current Longshoring Standard. This subpart addresses the hazards presented to employees by the opening and closing of covers designed to protect cargo from the elements. The principal hazards include employees falling into the hold while removing or replacing hatch covers and hatch beams and employees being struck by covers and beams as these articles are moved. The proposed language received widespread support from commenters (Exs. NMSA *et al.*, PMA *et al*) and are thus essentially unchanged in the final rule. OSHA is retaining sections in subpart E that address methods of covering hatches, such as with hatch boards, even though these methods have largely been replaced by more modern or automated methods or equipment. In both written comments and testimony, participants stated that vessels that require these older methods of covering hatches are still worked in U.S. ports and thus that OSHA should retain these requirements in the final rule (Ex. 8–20; SEA Tr. pp. 134–135).

Final rule § 1918.41, ''Coaming clearances,'' addresses the fall hazards associated with such clearances. Paragraph (a) addresses weather deck clearances and requires that when a smooth-sided deck load more than 5 feet high is stowed within three feet (.91 m) of the hatch coaming, and the coaming height is less than 24 inches (.61 m), a taut handline must be provided along the side of the deckload so that employees are able safely to remove or replace hatch beams and covers. This provision is essentially identical both to the corresponding provision of the existing standard and the proposed rule; it is also similar to requirements in the NYSA/ILA Joint Maritime Safety Code—part C/Rule 38 (Ex. 1–2) and the PCMSC—Rule 1007 (Ex. 1–145).

Final rule paragraph (b) is titled ''Intermediate decks.'' Paragraph (b)(1) requires that a three-foot (.91 m) clear work area be provided for intermediate deck hatchways before employees remove or replace these hatch beams or covers when a fall hazard exists. Paragraph (b)(1) also states an exception where the 3-foot clearance is not required when no fall hazard exists; for example, such a clearance is not necessary on the covered portion of a partially open hatch or when the lower deck has been filled to hatch beam height with cargo that itself provides a safe working surface. Paragraph (b)(2) specifically recognizes that a fitted grating can be considered part of the actual deck or working space if it is in good condition and is properly spaced within the 3-foot area. In addition, OSHA has dropped the reference to ''banana'' gratings found in the Agency's current longshoring regulation because it is an obsolete term.

Final rule paragraph (c) addresses the hazard of falling where, because of wing-space structures or spare parts storage, coaming clearance is reduced below the required 3-foot clearance. It requires employers to provide grab rails or taut hand lines in such cases.

Final paragraph (d) states that this section (§ 1918.41) does not apply where the opening and closing of hatches is accomplished by mechanical means that eliminate the need for employees to place or remove individual sections manually. However, whenever a three-foot clearance does not exist, means shall be taken to adequately secure cargo that is stowed within three feet (.91 m) of the edge of the hatch to prevent cargo from falling into the hold.

Final rule § 1918.42, ''Hatch beam and pontoon bridles,'' is carried over in its entirety from OSHA's current longshore rules, although some editorial changes have been made for clarity. Provisions in this section address the hazards of handling hatch beams and pontoons, such as falling into the hatch or being struck by these removable items. Equivalent rules can be found in section two of the PCMSC (Ex. 1–145) and parts C and O of the NYSA/ILA Joint Maritime Safety Code (Ex. 1–2).

Paragraph (a) of final rule § 1918.42 requires that hatch beams and pontoon bridles be long enough to fit their attachment points easily, be strong enough to lift the load safely, and be properly maintained. Paragraph (b) requires that bridles for lifting hatch beams be equipped with attachment devices, such as toggles, that cannot become accidentally dislodged. It also prohibits the use of hooks other than those specified in paragraph (b) unless such hooks are hooked into the standing part of the bridle.

Paragraph (c) requires that bridles used for lifting pontoons and plugs have the number of legs required by the design of the pontoon or plug and that all legs be used. Any legs that are not used must be hung on the hook or ring to prevent them from swinging free.

Paragraph (d) requires that at least two legs be fitted with a fiber rope lanyard that is a minimum of 8 feet long, is in good condition, and has a bridle end that is made of chain or wire. The purpose of all of the requirements in § 1918.42 is to ensure proper manual guidance of the lift.

Final § 1918.43, ''Handling hatch beams and covers,'' has also generally been carried over from OSHA's existing longshore rules, with some editorial changes made for clarity. Provisions in this section address the hazards associated with the handling and stowing of hatch boards, hatch beams, and pontoons; examples include employees or hatch covers falling into the hatch or employees being struck by improperly stowed items. Similar requirements are found in Section X of the PCMSC (Ex. 1–145), part O of the NYSA/ILA code (Ex. 1–2), and ILO Convention 152.

Paragraph (a)(1) requires that hatch covers or pontoons stowed on the weather deck adjacent to hatches must be positioned in stable piles that are a minimum of 3 feet from hatch coamings. An exception to this requirement is permitted in the situation where hatch covers or pontoons are spread one high between the coaming and bulwark on the working side of the hatch and there is no space between them (providing that the coaming is at least 24 inches high). Paragraph (a)(1) also prohibits hatch covers and pontoons from being stacked higher than the coaming or bulwark on the working side of the hatch.

Paragraph (a)(2) prohibits hatch boards or other covers that have been removed from the hatch beams in a section of the hatch that has been partially opened for the purpose of being worked, cleaned, or used for other operations from being stowed on those covers or boards in the hatch that have been left in place. This provision applies to seagoing vessels only.

Final rule paragraph (b) stipulates that hatch beams be laid on their sides or be stood on their edges and be lashed together except in cases where the hatch beams have flanges: (1) Whose width is at least 50 percent of the height of the web and (2) that rest flat on the deck when the hatch beam is stood upright.

Paragraph (c) addresses the potential dislodgement of strongbacks, hatch covers, or pontoons. It requires that, when such items are placed on the weather deck, they be placed so as not to obstruct clear fore-and-aft and coaming-to-bulwark passage and be lashed or otherwise secured. In addition, this paragraph requires that dunnage or other suitable material be positioned under each tier of strongbacks or hatch covers to prevent them from slipping; this provision applies only when such items are stowed on steel decks.

In paragraph (d), the final rule requires employers to take precautions designed to protect workers from falling hatch covers and strongbacks. It stipulates that hatch covers and strongbacks unshipped in an intermediate deck be placed a minimum of 3 feet from the coaming or be removed to another deck altogether, except that strongbacks may be placed a minimum of 6 inches from the coaming if they have been secured so that they cannot tip over or be dragged into the lower compartment.

To prevent accidental displacement, paragraph (e) requires that any hatch beam or pontoon left next to an open hatch section being worked must be locked or otherwise secured. In addition, unless portable, manually handled hatch covers (including those that have been bound together to form a single larger cover) have been securely lashed, they must be removed from sections being worked and adjacent sections.

Paragraph (f)(1) of the final rule mandates that the roller hatch beam at the edge of the open section of the hatch be lashed or pinned back to prevent it from being dislodged and falling through the open hatch. Similarly, paragraph (f)(2) requires that rolling, sectional, or telescoping hatch covers on barges that open in the fore and aft direction be secured against movement when they are in the open position, and paragraph (g) requires similar precautions for hinged or folding hatch covers when in the upright position (except in cases where the design of the system precludes unintentional movement).

Paragraph (h) prohibits the opening or closing of hatches while workers are in the square of the hatch below. This prohibition is necessary to prevent hatch beams or covers from dislodging and falling on the employees working on the lower level.

In the final rule, paragraph (i), which was a newly proposed provision, addresses the hazards of unsecured materials. Lashing wires, rods, and twist locks are often left on top of a hatch cover after the cargo has been discharged. These items can fall from the covers when the covers are being moved and injure employees, and this provision thus requires that all such materials be removed from the hatch cover or be secured before the hatch cover is removed. The words ''or secured to prevent them from falling off the cover'' has been added to the proposed language to recognize that, in addition to removing such materials, employers can achieve the required protection by securing these items to the hatch cover.

Final rule § 1918.43(j) requires that hatch covers or night tents be used to cover hatches, and that any covering that only partially covers a hatch, such as alternating hatch covers or dunnage strips, may not be covered by a tarpaulin. The reason for this prohibition is that employees could fall through the tarpaulin and partial covering. However, paragraph (i) allows an exception: tarpaulins may be used to cover an open or only partially covered hatch if they are used to reduce dust during bulk cargo loading and if positive means, such as barricades with placards, have been taken to ensure that employees do not walk on the tarpaulin. Verbal warnings, instructions or placards alone will not satisfy this provision. The exception has been added to the final rule, although the rest of this provision is similar to a paragraph in OSHA's existing Longshore Standard.

Subpart F—Vessel's Cargo Handling Gear

Subpart F applies to all gear and equipment used in cargo handling that is the property of the vessel. Examples of such equipment include cranes, derricks, specialized bridles, winches, wire rope, and shackles. This subpart addresses the hazards associated with that gear, such as using faulty gear, overloading or improperly rigging cargo gear, or the improper operation of cargo gear, which can result in serious injury or death (Ex. 1–103.).

Mr. Ronald Signorino, the Director of Health, Safety and Regulatory Affairs for Universal Maritime Services, described the diminishing amount of break-bulk cargo being handled with conventional cargo gear since the advent of containerized cargo (Ex. 6–35). He stated that traditional cargo handling expertise had become a ''lost art'' and therefore recommended that language be included in the final rule addressing the proper rigging and operating of conventional cargo gear. He reasoned that, since some cargo is still handled by conventional methods, including recommendations addressing the correct spotting of cargo handling gear would provide employees unfamiliar with such gear with guidance on its safe operation. Mr. Signorino noted that improperly spotted conventional cargo handling gear can fail, which causes the gear and cargo to fall and can lead to serious injury. OSHA agrees and has added this information in non-mandatory Appendix III.

Section 1918.51 contains general requirements that apply to all cargo handling equipment that is permanently attached to a vessel. Final rule paragraph (a) remains essentially the same as proposed and stipulates that the safe working load of the gear, whether marked on the lifting appliance itself or specified in the required certificates/gear register, may not be exceeded. It also specifies that any limitations imposed by the authority responsible for certificating the gear be followed.

Final rule paragraph (b) requires that each component of ship's cargo handling gear be inspected by the employer (or his or her designee) before every use and at appropriate intervals during use. This paragraph clarifies the corresponding requirement in OSHA's existing Longshore Standard by making clear that the employer has an obligation to do a visual inspection. One commenter, the International Cargo Gear Bureau, Inc. (ICGB), pointed out that the proposed paragraph would have limited the designees to ''representatives of the employer,'' which was not OSHA's intent (Ex. 6–22). OSHA has revised the language of the final rule to say, ''designated person.''

Referring to the same paragraph, § 1918.51(b), another commenter, the National Maritime Safety Association (NMSA), suggested that OSHA add the words ''and when necessary'' before the words ''at intervals during use'' (Ex. NMSA *et al.*). However, OSHA disagrees with this comment because the Agency believes that, during use, events could occur or conditions arise that would suggest to a prudent operator that an unscheduled visual inspection may be necessary. OSHA agrees with NMSA that the inspection intervals required by the final rule should be qualified but believes that the word ''appropriate'' captures the desired meaning better than the suggested word ''necessary.'' The final rule reflects this determination.

In final paragraph (c), employers are required to determine the load ratings of all wire ropes and rope slings presented in the vessel's wire rope certificate and to observe these ratings when using this gear.

Final rule paragraph (d) provides criteria for splicing wire rope and for wire rope configuration characteristics and is essentially unchanged from the corresponding paragraph of the proposal. It addresses eye splices, requirements for wire rope used in lifting, natural and synthetic fiber rope slings, and chains. Additionally, this paragraph brings the Longshore regulations for wire rope into conformity with the same criteria as those in OSHA's rules for shoreside marine cargo handling equipment (§ 1917.42) and thus reflects OSHA's effort to maintain consistency between parts 1917 and 1918 and to enhance employee safety.

Final rule §§ 1918.52, 1918.53, and 1918.54 all address the subject of rigging and operating vessel's cargo handling gear. The requirements of these sections are essentially the same as those parallel provisions found in the existing and proposed rules, although some language modifications have been made to enhance clarity.

Final rule § 1918.52, ''Specific requirements,'' contains provisions addressing preventers, stoppers, falls, heel blocks, coaming rollers, and cargo hooks. Paragraphs (a)(1) and (a)(2) mandate that preventers have sufficient strength to achieve their purpose and be properly secured to the head of the boom (unless, for cast fittings, the strength of the fitting exceeds the strength of all lines secured to it (paragraph (a)(1)) and that wire rope clips and knots not be used to form eyes in or join preventer guys (paragraph (a)(2)).

Paragraphs (b) (1), (2), and (3) contain requirements for the condition, configuration, strength, and securing of chain topping lift stoppers. These requirements are essentially unchanged from the parallel provisions of the proposal. OSHA solicited comment in the proposal regarding whether or not to delete § 1918.52(b) as obsolete. This paragraph addresses the use of chain topping lift stoppers and clamp type stoppers that are used manually to lower and raise the boom. This method of topping the boom is a potentially dangerous operation and has been largely replaced by the use of electric topping lift winches that do not require the use of stoppers. As noted earlier, however, vessels continue to call on U.S. ports equipped with this older equipment. Such vessels will need to be addressed by § 1918.52(b), as noted in the comments (Ex. NMSA *et al.*). OSHA agrees and has accordingly left this requirement in the final rule.

Paragraph (c) specifies requirements for the securing, conditions of use, formation of, and winding of the fall on the drum. Again, no comments were received on these provisions, which are essentially unchanged from those proposed. These provisions are designed to ensure that winch falls do not slip, break, or release while cargo is being lifted.

Heel blocks are covered by the requirements of paragraph (d). Paragraph (d)(1) requires that a preventer or equally effective means be used to hold the block in the event of heel block attachment failure. In paragraph (d)(2), OSHA requires that, in cases where the heel block is not so rigged as to prevent its falling when not under strain, the heel block must be secured, except where the heel block is at least 10 feet above the deck at its lowest point.

Paragraph (e) of the final rule requires portable coaming rollers to be secured by wire preventers, while paragraph (f) specifies that cargo hooks be as close to the junctions of falls as the assembly permits, but in all cases within 2 feet of the assembly. Paragraph (f) applies only to vessels and operations where fall angles greater than 120 degrees occur.

Cargo winches are covered in § 1918.53 of the final rule. Paragraph (a) stipulates that the moving parts of winches or other deck machinery be guarded to prevent employees from being caught in or between moving parts. According to paragraph (b), winches may not be used if control levers operate either with excessive play or friction; paragraph (c) prohibits the use of double gear winches or other winches equipped with a clutch unless a positive locking mechanism to lock the gear shift is provided. When the gears on a two-gear winch are being changed, paragraph (d) prohibits any load on the winch other than the fall and cargo hook assembly.

Paragraph (e) requires that any defect or malfunction that has the potential to affect safety be reported immediately to the officer in charge and that the winch in question not be used until the defect or malfunction has been corrected. The proposal added the following language to this paragraph: ''* * * and the winch shall not be used until the defect or malfunction is corrected.'' This addition was supported by the International Longshoremen's and Warehousemen's Union (Ex. 19). In addition, several comments were received regarding the phrase ''Any defect or malfunction of winches that affects safety * * *.'' These commenters stated that the language was too broad and that the less specific language in OSHA's existing standard should be retained instead (Exs. NMSA *et al.,* PMA *et al.*). Other commenters agreed with the proposed language, however (Ex. 19, NO Tr. pp. 250–251). OSHA finds NMSA's and PMA's arguments unconvincing because the Agency believes that employers will benefit from the more specific requirement. However, the final language has been modified for clarity to say ''Any defect or malfunction of winches that could endanger employees * * *''.

Paragraph (f) requires that temporary seats or shelters for winch drivers not be used if they create a hazard to the operator or other employees (e.g. a ''plywood roof'' that obstructs the view of the operator). In addition, paragraph (g) prohibits winch drivers from using control extension levers that have not been provided by the employer or the ship (except for short handles on wheel-type controls). If used, such levers must be of adequate strength and be securely fastened. Any extension lever that tends to fall under its own weight must be counterbalanced, according to paragraph (h).

In paragraph (i) of the final rule, OSHA requires that winch brakes be monitored during use, and that those that are not able to hold the load be removed from service. As proposed, this requirement mandates that winches be monitored during operation. One commenter suggested that the phrase ''monitored for performance'' be more fully explained in the final rule (Ex. 6–46). In response, OSHA notes that the requirements in § 1918.53 are directed to the employer of the employees who operate the winches to load and unload cargo. If, during operation, it is observed that the winch brakes do not prevent the cargo gear from lowering or slipping while under a load, the winch must be removed from service. To provide the specifics requested by this commenter, the language of paragraph (i) now reads as follows: ''(i) Winch brakes shall be monitored during use. If winch brakes are unable to hold the load, the winch shall be removed from service.''

The requirement at paragraph (j) states that winches may not be used if one or more control points are not operating properly, and further specifies that employees are not permitted to tamper with or adjust the winch controls. Both of these requirements are designed to ensure the safety of hoisting and lowering operations performed with a winch.

To ensure that unattended winch controls are not tampered with or adjusted, paragraph (k) requires that the control levers of unattended winches be placed in the neutral position and that the power be shut off or the control lever be locked. As proposed, a

feasibility exception that is included in OSHA's existing Longshore Standard has been deleted because it was based on a winch design feature that is no longer in use today because of technological improvements.

Section 1918.54, entitled ''Rigging gear,'' addresses the hazards associated with the unsafe practice of rigging guys or preventers so that they chafe against other guys, preventers, or stays. Such chafing can cause the vessel's cargo gear to fail because the chafing can cause the wires to separate, leading to possible serious injury or death as the gear and cargo fall down on the deck or into the hold. Several commenters supported the inclusion of this paragraph in the final rule (Ex. NMSA *et al.*).

Paragraph (a) requires each guy or preventer to be placed in a manner that prevents it from contacting any other guy, preventer, or stay, and paragraph (b) requires that guys be placed to produce the least amount of stress without allowing the boom to jackknife. Boom placement is addressed in paragraph (c), which states that the head of the midship boom must be spotted no further outboard of the coaming than is required to control the load. Preventers are covered in paragraph (d). Paragraph (d)(1) requires that these devices be secured to suitable fittings (other than those to which the guys are secured) and be as nearly parallel to the guys as the fittings permit. Except when the cleat is also a chock and the hauling part is led through the chock opening, the lead of preventers must be designed so that the direction of the line pull of the preventer is as parallel as possible to the surface on which the cleat is mounted (paragraph (d)(2)). Paragraph (d)(3) requires that guys and associated preventers be adjusted so that the load is shared as equally as possible when burtoning operations are underway. An exception is allowed where guys are designed and intended only for trimming purposes and the preventer is used in lieu of the guy; in such cases, the guy may be left slack.

Cargo falls are covered by paragraph (e), which stipulates that cargo falls under load are not permitted to chafe against any standing or other running rigging. A Note to this requirement stresses that, for the purposes of this paragraph, rigging is not to be construed to mean hatch coamings or other parts of the vessel.

In paragraph (f)(1) of the final rule, employers are required to secure the bull wire to the gypsy head by shackle or equivalent method where the bull wire is taken to the gypsy head for lowering or topping the boom. Fiber rope may not be used to comply with this provision. Paragraph (f)(2) states that, when it is not possible to secure the bull wire to the gypsy head or when the topping lift is taken to the gypsy head, at least five turns of the wire must be used.

When deck loads are higher than the rail and the clearance between the edge of the load and the inside of the bulwark or rail is less than 12 inches, paragraph (g) requires employers to provide a pendant or other alternate device to permit trimming of the gear without its going over the side. The provisions in section 1918.54 are essentially unchanged from the parallel requirements in the proposal.

Final § 1918.55, titled ''Cranes,'' covers deck cranes permanently attached to a vessel. OSHA's existing rule only addresses the hazards associated with the swing radius of the crane. The final rule's requirements, on the other hand, provide more comprehensive coverage of the hazards encountered in the use of ship's cranes. In addition, these requirements closely parallel similar shoreside requirements in part 1917 and in other OSHA crane standards.

In § 1918.55(a), OSHA prohibits the use of cranes that develop a visible or known defect affecting safe operation. In addition, proposed paragraph (b)(1) required that the operator's station be well maintained, with good visibility provided through the cab's glass. Comments were received (Ex. NMSA *et al.,* PMA *et al.*) recommending that OSHA reword the language of this provision of the existing Longshore Standard for the sake of clarity. Other commenters pointed out that the proposed wording of this provision was similar to language found in the Pacific Coast Marine Safety Code (although the code requires replacement of cracked or broken glass) (Ex. 19). In response to the comments received, OSHA has revised the language in this paragraph to read as follows: ''Cranes with missing, broken, cracked, scratched, or dirty glass (or equivalent) that impairs operator visibility shall not be used.'' The same language has been used in § 1917.45(f)(5), addressing the same issue in relation to cranes used in marine terminals.

Paragraph (b)(2) mandates that clothing, tools and equipment be stored in a manner that does not restrict access to or operation of the crane or interfere with the operator's view.

According to paragraph (c), areas that are within the swing radius of the body of revolving cranes and are accessible to employees must be guarded during cargo operations to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane. In proposed paragraph § 1918.55(c)(1), OSHA addressed the danger of employees being caught between shipboard gantry cranes and fixed structures on deck along the travel path of the crane, such as would occur on a LASH (Lighter Aboard Ship) vessel or a self-contained container ship. (Ex. 1–103, cases 26 and 27). OSHA received both comment and testimony on this proposed language. The commenters pointed out that there are means other than physical guarding to protect employees in this situation, such as using a proximity device to shut down crane travel if an employee is in danger of being caught between the crane and a structure on the vessel (Ex. NMSA *et al.,* NO Tr. p. 396). OSHA agrees with these commenters and has added the words ''or other effective means shall be taken'' to paragraph (c)(1) of the final rule. Also, a note has been added for clarification that says; ''Verbal warnings to employees to avoid the dangerous area do not meet this requirement.''

An issue discussed at length during the public hearings was the bypassing of limit switches during cargo operations. Most cranes, both shore-based and shipboard, are equipped with limit switches. Limit switches are designed to prevent the crane and boom from damage by deactivating the crane when certain limits are exceeded. Limit switches can prevent the crane from the following hazards: boom collapse, unwanted contact with the vessel or other structure, exceeding the safe working load, or dropping a container. Another example of a limit switch is the anti-two-blocking device. The calibration of limit switches always incorporates a specific margin of safety.

In the proposal, OSHA did not allow the bypassing of limit switches during cargo operations. The National Maritime Safety Association, in their written comments, asked that OSHA allow limit switches to be bypassed, but only after an officer of the vessel has been notified, and only where a designated person directs the operation (Ex. NMSA *et al.*). During the public hearings in Seattle, members of the International Longshoremen's and Warehousemen's Union (ILWU) Longshore Coast Safety Committee testified that limit switches should not be bypassed except in certain situations, such as an emergency. They expressed concern that bypassing limit switches could put stresses on cranes for which they were not designed, resulting in a dangerous situation. The ILWU also stated that this issue had been considered by the Joint Co-Safety Committee, which consists of

members from labor and management, and that Committee had determined that cranes with a load should never be put in a bypass mode (SEA Tr. pp. 106–113).

Further, a member of the Pacific Maritime Association (PMA) testified at the Seattle hearings that because of the discussions between the PMA and the ILWU, Rule 277 of the Pacific Coast Marine Safety Code had been adopted:

> Bypass keys where ships' cranes equipped with limit switches, shall not be left in the override locks. That * * * [is], the keys were not to be maintained in the override locking position.
>
> That was the result of the discussion. There was never unanimous agreement on if bypass switches could be turned on for special moves or special types of operations (SEA Tr. p. 158).

During the Seattle hearings, further testimony on the issue of bypassing limit switches was given by Don Lawson, principal surveyor with Marine Surveyors and Consultants, Inc., a company accredited by the Department of Labor under part 1919 to inspect and certify vessel and shore-based cargo handling gear. Mr. Lawson stated:

> The purpose of the limit switch is:
>
> [First] to prevent stresses on the structure, particularly the boom, when the maximum radius is reached, and if the safe working load was on the hook at the time, to go below the safety switch, the lower limit safety switch, would be an overstressed situation.
>
> The second reason for a limit switch is preventing physical damage, physical contact with structures around the crane, and this is where there's been a lot of problems over the years.
>
> A limit switch should never be bypassed for cargo operations. I agree with the scenario of a life and limb situation or an emergency situation where there might be property damage and that there should be somebody technically-oriented to carry that out.
>
> In the hundred or so incidents we've been involved with, most the times the jib, when the limit switch is bypassed, is set down on the crutch or the foundation for another crane on the vessel, which is on the same platform, or it's the rail of the platform.
>
> The operator's view of these areas is limited because the structure of the jib is quite large and does obstruct the side view * * *.
>
> In all cases, if there's been contact with ship structure, the limit switch had been bypassed.
>
> Another statement that came out yesterday is there's a lack of design or a problem with design of vessels and that you must bypass the limit switch in order to get to certain reaches of a hatch. That's not true.
>
> The newer generation loggers have long midships hatches. Usually the middle hatches, and the two and three or three and four hatches are long, but they're served by cranes on both sides of the hatch.
>
> If you look at a shadow plan of the radius of the cranes, you'll see that they're concentric circles in the center of the hatch, but in the trunks the forward crane will not reach the after trunk and vice versa (SEA Tr. pp. 278–289).

Further testimony given by an ILWU container crane operator addressed bypassing the limit switches on the container spreader bar. These switches are designed to prevent the corner twist locks from unlocking when handling a container. Citing snow as an example, he stated:

> * * * I don't believe that we should use a bypass because we have snow jamming the sensors and the corners of the spreader. What we should be doing, of course, and what we normally do is lower the spreader and have somebody clean out the snow (SEA Tr. p. 111).

Another dock worker testified that the spreader corner locks can be bypassed to speed up an operation. Instead of having to wait for the limit switches to activate and release the locks, bypassing them allows for a faster operation. However, this same witness testified that this practice can also lead to a spreader releasing a container inadvertently while in the air (SEA Tr. pp. 306–307).

One employer, Captain John McNeil, Vice-President of Operations, Marine Terminals Corporation, testified that there are occasions where the limit switches on a container crane can be an operations problem.

> * * * The upper limit on container cranes is usually set by a limit switch, to six feet under the boom to permit normal, safe operations.
>
> When we have an especially high vessel that comes into that threshold one or two feet, it is a common practice, is it not, to shut off the bypass or to raise the bypass limits to be able to work that extra tier of containers? (SEA Tr. p. 285).

Additionally, Captain McNeil noted that limit switches are sometimes bypassed, prior to cargo handling operations, when a vessel has two cranes at the same hatch that can be operated together (married) or separately (SEA Tr. pp. 286–288).

Post hearing comments submitted by the ILWU repeated their position against bypassing limit switches and included suggested language for the final rule. They also stated that similar language should be included in the Marine Terminals Standard, as part of § 1917.45, *Cranes and derricks* (Ex. 78).

After a thorough review of all the comments and testimony, OSHA remains unconvinced that limit switches can be safely bypassed during cargo operations and continues this prohibition in the final rule. However, OSHA recognizes that, in addition to emergencies, there are certain non-cargo handling operations that occur that necessitate the bypassing of limit switches but have no adverse impact on worker safety. OSHA has identified three specific situations where such bypass systems may be activated: during an emergency, while performing repairs or when stowing cranes or derricks. To provide additional safeguards, any time a bypass system is used, it must be done under the direction of an officer of the vessel. Paragraph (c)(2) of the final rule has been revised accordingly.

The provisions of paragraph (c)(2) are also being carried over to shore-based cranes in the final rule on marine terminals. However, OSHA recognizes, in one unique, shore-based situation, where the limit switches of cranes can be readjusted without an adverse impact on worker safety. Specifically, when a container ship with an unusually high deck load causes the upper limit switches to activate before the top tier of containers can be worked, then the limit switches can be safely readjusted if the margin of safety provides enough extra height to allow readjustment. While readjustment may be allowable under these narrow circumstances, bypassing the limit switch is not. To provide additional safeguards, readjusting limit switches may only be done under the direction of a crane mechanic. Therefore, OSHA has also included language regarding adjustments of limit switches in § 1917.45(g)(11).

Final rule § 1918.55(c)(3) requires a minimum of three full turns of wire rope to remain on ungrooved drums and at least two turns on grooved drums under all operating conditions; this is a precaution against slippage of the rope.

Paragraph (c)(4) requires that crane brakes must be monitored during use. This requirement is essentially unchanged since the proposal. (See discussion about brakes in § 1918.53(i), above.)

Paragraphs (c)(5) and (c)(6) address crane control levers and cranes with power down capability. Both of these provisions, which are standard safe operating procedures for cranes, are unchanged since the proposal.

Under paragraph (c)(7), when two or more cranes are used together to hoist a load, a designated person must direct the operation and instruct personnel in safe positioning and rigging. The designated person must also direct the movement of the crane. No changes have been made to this requirement since the proposal, and no comments on this provision were received.

Paragraph (d), which applies to cranes that are unattended between work periods, states that § 1918.66(b)(4) (i) through (v) applies to such cranes.

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

Subpart G, Cargo Handling Gear and Equipment Other than Ship's Gear, applies to all cargo handling gear used in cargo operations that is not part of the vessel (i.e. ship's gear). Some examples of the type of gear addressed in this subpart include: container handling lifting frames and certain multi-point engagement bridles, gear room constructed spreader bars for heavy lift cargo, special lifting devices for unique pieces of cargo, and bar pallet bridles. Except as noted below, commenters generally supported these provisions as proposed (Exs. NMSA *et al.*, PMA *et al.*).

Final rule § 1918.61 covers a wide range of subjects relating to gear inspection (examples: safe working loads, weight markings, certification, special gear). Paragraph (a) requires that all gear and equipment provided by the employer and brought aboard a vessel must be inspected before and, when appropriate, during its use by a designated person to assess its condition. If found to be unsafe, such gear cannot be used until it has been made safe. This paragraph is similar to the corresponding provision of the existing regulation, except that the term ''designated person'' has replaced the term ''authorized representative'' in the final rule. This change is consistent with the decision discussed in subpart A, Scope and definitions, regarding the use of the term ''designated person.''

Final rule paragraph (b)(1) is the same as the parallel requirement in the current and proposed longshore rules and requires that the Safe Working Load (SWL) of gear not be exceeded. Final rule paragraph (b)(2) was a new provision in the proposal. This paragraph requires the marking of the safe working load (SWL) on all cargo handling gear with a SWL of more than five short tons (4.5 metric tons). This practice is consistent with current recognized industry practice (Ex. 1–151). In the proposal, OSHA stated that most gear in use is already marked with the SWL, and no comments to the contrary were received.

Final rule paragraph (c) requires that any article of stevedoring gear weighing more than 2,000 pounds (.91 metric tons) must have its weight marked plainly on the article before being hoisted by the ship's gear. It is important to consider the weight of such articles when evaluating safe working loads of the vessel's cargo gear because the weight of the gear must be added to the weight of the load being lifted to figure out the actual load, which together cannot exceed the SWL of the vessel's cargo gear.

Final paragraphs (d) and (e) address certification and certification procedures. These provisions parallel those found in the shoreside Marine Terminal rules (§ 1917.50(a) and (b)(1)). Paragraph (d) requires certification of any special gear listed in paragraphs (f)(1) or (g) of this section. Paragraph (e) requires that this certification be done by a party accredited by OSHA under 29 CFR 1919. Final rule paragraph (d) has been corrected to include a reference to paragraph § 1918.61(g), which addresses the initial proof-load testing of intermodal container spreaders. The reference to paragraph § 1918.61(g) was mistakenly omitted in the proposal.

Paragraph (f), entitled ''Special gear,'' addresses special stevedoring gear, which is material handling gear fabricated of components that are not common, off-the-shelf items. Common, off-the-shelf gear would include hooks, shackles, and other items that have already been tested by the manufacturer. Examples of special stevedoring gear include gear room-constructed spreader bars for heavy lift cargo, special lifting devices for unique pieces of cargo, or bar pallet bridles that have some components that are not marketed or purchased with a specific cargo handling use in mind.

OSHA's existing Longshoring Standard requires initial testing for new special stevedoring gear, but does not require the tests to be conducted by an OSHA accredited agency (see § 1918.61(b) of that rule). The existing Marine Terminals Standard also requires initial testing for new special stevedoring gear. These tests, however, must be conducted by an OSHA accredited agency (see § 1917.50(c)(5)).

In the proposal, OSHA distinguished between heavy lifting gear (gear with a SWL over five short tons) and lighter gear. Heavy gear tends to be more complex in design and fabrication, more difficult to inspect and test, and presents a greater employee exposure hazard upon failure. Lighter gear, which is far more extensive and commonly associated with palletized/break bulk operations, is less complex in design and fabrication, less difficult to inspect and test, and presents a reduced employee exposure hazard upon failure. Based on these distinctions, OSHA proposed testing by an accredited agency for the heavy gear with proof load testing specifications ranging from 25% to 10% in excess of the SWL. For the lighter gear, OSHA proposed that testing be conducted by a qualified employee (in lieu of third party certification) to a specification of 25% in excess of the SWL.

Final paragraph (f)(1) requires special gear provided by the employer, the strength of which depends on special gear components and that additionally has a Safe Working Load of more than five short tons (4.5 metric tons) to be tested and inspected prior to initial use as a unit. Paragraph (f)(2), which is a provision similar to the corresponding provision of OSHA's existing Longshoring Standard, requires that special stevedoring gear with a SWL of five short tons or less continue to be inspected and tested prior to initial use as a unit by either an accredited agency or by a designated person. All tests required by this paragraph must be in accordance with Table A shown in paragraph (f).

Paragraph § 1918.61(g) of the final rule requires that all intermodal container spreaders provided by the stevedore for hoisting afloat (aboard a vessel) shall be similarly inspected, tested, and certified. This provision also requires any spreader that is damaged in a way that requires structural repair to be inspected and retested after the repair is performed and before the spreader is returned to service. It should be noted that intermodal container spreaders that are part of ship's gear are required to be inspected and tested as part of the vessel's cargo gear under ILO Convention 152 (see subpart B, Gear certification).

Paragraph (h) requires that all cargo handling gear covered by this section having a SWL greater than five short tons be proof-load tested every four years according to Table A found in paragraph (f) or paragraph (g) of this section, as applicable. This proof-load test may be conducted by an agency accredited by the U.S. Department of Labor under 29 CFR part 1919 or by a designated person.

Final paragraph (i) requires that certificates and inspection records generated by the tests required by this section be made available for inspection. These include the certificates issued by accredited agencies as well as inspection and test records produced by designated persons while testing the equipment. Additionally included is any initial test records required by the existing standard for the purposes of the periodic testing provisions of paragraph (h) of this section.

Several issues related to § 1918.61 arose during rulemaking; these can be categorized as follows:

(1) There are no OSHA-accredited agencies in or near some ports, some commenters said, especially small ports,

which would increase costs and burden, perhaps especially for some small employers;

(2) Several commenters contended that requiring OSHA accredited agencies to provide certification for fabricated equipment repeats the current function of steel fabricators;

(3) Some break-bulk stevedores noted that a great deal of equipment would have to be certified or inspected every four years.

In their view, the Agency has underestimated the costs of certification and four-year equipment testing. In addition, they argued that the Agency did not demonstrate how the proposed testing provisions will significantly reduce the risk of using special gear and spreaders and that the Agency has not shown that these requirements are reasonable and necessary. Each of these points is addressed in turn.

In response to a comment questioning the availability of the OSHA accredited agencies required to conduct the tests specified in this section (SEA Tr. p. 484), OSHA notes that there are currently 130 OSHA accredited agencies in the United States and that they are located in all of the major port areas, including the Great Lakes and the Inland Waterways. Mr. Donald Lawson, with Marine Surveyors and Consultants, also testified that there were 5 to 10 companies that could do the required testing in the Seattle and Portland, Oregon area alone (SEA Tr. p. 278).

Several commenters questioned whether OSHA had provided information or data that showed that the proposed revisions to these requirements would reduce employee risk in this industry. The record clearly demonstrates, on a national level, that gear failures frequently occur. Data in the IMIS database indicate a record of injuries and fatalities due to gear failures (Ex. 1–103, cases 108, 116, 124). OSHA thus concludes that these requirements, which are designed to prevent gear failure, are necessary to employee protection.

In addition, OSHA received several comments and testimony suggesting that only a prototype or sample of special stevedoring gear needed to be proof load tested, instead of testing every single piece of gear, as proposed (Exs. 8–8, 8-20, SEA Tr. pp. 164–169, NO Tr. pp. 209–211). For example, Mr. Don Lawson, principal surveyor with Marine Surveyors and Consultants, testified:

> I agree with the fact that a prototype can be developed with sufficient engineering and tested, but once production starts there need to be controls in workmanship and quality control and quality assurance and in the material * * * . They'll look for things, such as traceability and materials, for production controls, and for quality assurance * * *. Beyond that, the next step would be to make periodic visits to spot check workmanship, and then to carry out testing on 10 out of 100 or one out of 200 units (SEA Tr. pp 282–283).

After careful consideration, OSHA agrees with Mr. Lawson's concern for quality assurance and reproducibility of specifications in unique shop-built stevedoring gear. Unlike the quality control mechanisms built into a manufacturing process that mass-produces items, OSHA believes that shop built items are more subject to variations in fabrication. These items, therefore, shall be individually tested according to this section.

Several commenters criticized the Agency's estimate of the costs that employers must incur to meet the revised standards for gear testing (SEA Tr. pp. 154, 236–250, 399, and 570). Some of these commenters are representatives of stevedores who perform specialized longshoring operations, such as logging and wood pulp, almost entirely on vessels. Since these employers primarily use special gear located aboard vessels, their gear has not previously been required to be tested, as marine terminal equipment has. Those employers who are involved primarily in container transport are not as affected by the final standard as stevedores engaged in break-bulk operations. Although some commenters expressed concern over the potential costs of these provisions, others agreed with OSHA that they were economically feasible for affected firms, as demonstrated by the comments of Mr. John Faulk, testifying on behalf of NMSA:

> NMSA agrees with the approach by OSHA for 1917.50(c) and 1918.61(d) concerning certification of special stevedoring gear is practical, economically feasible and will provide adequate safeguards* * *. Except for the recommendations submitted by NMSA in their written comments * * * NMSA fully endorses OSHA's proposed language on the other provisions found in this subpart (NO Tr. p. 153).

The Agency has revised its cost estimates and its estimation of the impact on particular employers for this final rule (see SectionVI, Summary of the Final Economic Analysis and Regulatory Flexibility Analysis).

OSHA has included a table entitled ''Cargo Gear Testing Requirements'' in a non-mandatory appendix (Appendix IV). A form of this table was originally recommended by the National Maritime Safety Association and the Pacific Maritime Association (Exs. 8–8, 8–20) for inclusion in the standard as a compliance tool. Besides the performance and frequency requirements, OSHA has added the proof load testing specifications from Table A of § 1918.61(f) to the table in Appendix IV so that it summarizes all of the testing gear requirements of this section. OSHA believes that this tabular information will enhance the clarity of the provisions and thus promote compliance.

For consistency, these same changes are being made to the parallel provisions of the Marine Terminals Standard (§ 1917.50 (c)).

Final rule § 1918.62, titled ''Miscellaneous auxiliary gear,'' covers all miscellaneous gear provided by the stevedore that is not part of ship's gear. The hazards addressed by this section are those generally associated with an employee being struck by falling objects, e.g. dunnage, gear or cargo, when the gear fails. These provisions of the final rule parallel the same requirements for miscellaneous gear found in the shoreside cargo handling standards at § 1917.42.

Several modifications have been made to the existing rule to reflect the changes that have occurred in modern marine cargo handling methods. For example, the replacement criteria for wire rope are more stringent than those in the current regulation (see § 1918.62(a)(4) of the final rule), and the prohibition against using new parts made of wrought iron now accords with the prohibition in ILO Convention 152 (see § 1918.62(a)(5)(ii) of the final rule). Additionally, the final rule consolidates a number of closely related provisions formerly scattered throughout the rules into this one section; again, this is consistent with the format of the corresponding section in part 1917. Several commenters supported these provisions as proposed (Ex. NMSA *et al.*).

Paragraph (a)(1) mandates that, after the completion of each use, loose gear be placed in a manner that will avoid damage to the gear. In addition, this provision states that loose gear must be inspected after each use and be repaired before reuse if found to be defective.

Section 1918.62(a)(2) prohibits the use of defective gear and requires that distorted hooks, shackles or other similar gear be discarded to prevent its reuse. Several commenters suggested that OSHA clarify the meaning of the word ''defective'' (Exs. 19, 6–31a, 8–8, and 8–20), and the final rule now explains that those defects falling within the definition of ''defective'' as used by the manufacturer of the particular gear are addressed by this provision of the final rule. In addition, when manufacturers' specifications are

not available to determine whether gear is defective, the employer must use the appropriate paragraphs of this section to make these determinations.

Paragraph (b) covers wire rope and slings that are not part of ship's gear. Employers are required by paragraph (b)(1) to follow the manufacturer's recommended ratings for wire rope and wire rope slings and to have such ratings available for inspection. In cases where the manufacturer is not able to supply the rating, employers must use the wire rope and wire rope sling tables found in Appendix II of this rule.

OSHA, in the proposal and the final rule, has included a comprehensive collection of tables, in Appendix II, that are to be used when manufacturers' specifications or gear certificates are not immediately available at the worksite for safe working load assessment. These tables are primarily based on American Society of Mechanical Engineers Standard (ASME) B30.9–1990 (Slings) (Ex. 1–148) and on requirements applying to wire rope clips and shackles currently contained in the Agency's rules for marine terminals.

Several commenters urged OSHA to make the use of these tables non-mandatory (Exs. 8–8, 8–20); these commenters noted that the proposed appendix containing these tables was non-mandatory and argued that the terminology used in the provision of the regulatory text referring to these tables should also be nonmandatory. In response, OSHA notes that the corresponding tables in OSHA's existing Longshore rule are referred to in mandatory language, and after careful consideration, has concluded that reliance on these tables is mandatory when certificates or manufacturers' use recommendations are not available. Consequently, OSHA has decided to change the status of Appendix II from non-mandatory to mandatory. This position was supported by several commenters (Exs. 19, 78, 6–49, 6–50, 6–51, 6–52, 6–53, 6–54, and 6–55). According to final rule paragraph (b)(2), wire rope having a safety factor of less than 5 may be used only in accordance with the limitations specified in paragraphs (b)(2)(i) through (iii). Wire rope or wire rope slings having any of the defects specified in paragraph (b)(3)(i) through (vi) may not be used for fear of failure.

Paragraphs (b)(4) through (b)(9) address covering or blunting of the ends of strands in splices, the use of wire rope clips to form eyes, the securing of wire rope, and eye splices. These provisions are essentially unchanged from the parallel provisions in the existing rule and in the proposal and are considered standard industry practice.

Paragraph (c) of the final rule contains similar provisions that apply to natural fiber rope and natural fiber rope slings used aboard ship, and paragraph (d) addresses the same hazards as they apply to synthetic rope and synthetic rope slings. The load ratings found in the various tables in Appendix II are to be used for ropes and slings of all types, as identified on the appropriate table.

In § 1918.62(e), those defects that are sufficient to require the removal from service of natural or synthetic ropes are identified; these defects include abnormal or excessive wear, cut or broken fibers, rotting, and other structural defects that could cause the rope to fail under load. Paragraph (f) requires, where practicable, that properly fitted thimbles be used in cases where the rope is secured permanently to a ring, shackle, or other attachment. These provisions are also essentially unchanged both from the corresponding provisions of the existing rule and the proposed rule.

Paragraph (g) of the final rule, titled ''Synthetic web slings,'' prescribes the conditions of use, causes for removal from service, and other requirements governing synthetic sling use. Paragraph (g)(1) prohibits the use of slings and nets composed of more than one piece of synthetic webbing and used as a single unit to hoist loads greater than the loaded capacity of the sling itself. In paragraph (g)(2), those defects that require the sling to be removed from service are specified; examples of such defects are acid or caustic burns, snags or punctures, and signs of excessive wear or damage. Paragraph (g)(3) prohibits the return to service of defective synthetic slings unless they have been repaired by a sling manufacturer or an entity with equivalent competence and additionally pass two proof tests. Manufacturers' use recommendations are required to be followed by paragraph (g)(4), and paragraph (g)(5) of the final rule mandates that fittings have a breaking strength that is at least equal to that of the sling to which the fittings are attached. These requirements, which were not specifically addressed by commenters, are essentially unchanged from the parallel requirements of the proposed rule and the Agency's Marine Terminals Standard. Their inclusion in the final rule thus achieves consistency in synthetic sling requirements in OSHA's marine cargo handling rules.

Paragraph (h) is titled ''Chains and chain slings used for hoisting.'' Employers are required by paragraph (h)(1) to observe manufacturers' ratings for safe working loads when wrought iron or alloy steel chains and slings are used and additionally must have such ratings available. When such ratings are not available, Table 4A of Appendix II must be relied on for this information (for alloy steel chains and chain slings only). Paragraph (h)(2) specifically prohibits the use of coil steel chain or of other types of chain not recommended for slinging or hoisting by the manufacturer. The provisions of paragraph (h)(3) address the inspection of sling chains, specify the conditions that require removal of the chain from service, and stipulate that the inspection of chains used for slinging and hoisting may be performed only by designated persons.

Stringent requirements governing the repair of chains used for hoisting are included in paragraph (h)(4), and paragraph (h)(5) requires any wrought iron chains continually used for hoisting to be annealed or normalized at intervals not to exceed every 6 months. Following ILO recommendation 160 (Ex. 1–8), OSHA proposed to add language to this section to prohibit the use of wrought iron (which is considerably less elastic than steel and thus is more prone to fail) in new parts of lifting appliances or loose gear (§ 1918.62(h)(5)(ii)). Although wrought iron is rarely seen on vessels that are trading today, such gear may still be in use on some vessels, and OSHA has therefore included this provision in the final rule.

Paragraphs (h) (6), (7), and (8) prohibit the use of kinked or knotted chains, require hooks, rings, links, and other attachments to have rated capacities at least equal to those of the chains to which they are affixed, and mandate that chain slings be marked with their size, grade, and rated capacity, respectively. Shackles are covered in paragraph (i)(1), which requires that the manufacturers' safe working load, if known, not be exceeded; where this information is not available, employers are required to follow Table 5 of Appendix II. Paragraph (i)(2) mandates that all screw pin shackles provided by the employer and used aloft (except in cargo hook assemblies) have pins that are positively secured.

Hooks other than hand hooks are required by paragraph (j)(1) to be used in conformance with the manufacturers' safe working load and to be tested in accordance with paragraphs (a), (c), and (d) of § 1919.31 unless manufacturers' test certificates are available for such hooks. Paragraphs (j) (2), (3), (4) and (5) specify the conditions of use pertaining to hooks (other than hand hooks). These

requirements are essentially unchanged from those proposed.

Pallets are covered by the requirements of paragraph (k). Paragraph (k)(1) specifies that pallets be made and maintained so that they will support the loads being handled and requires that the fastenings of reusable pallets that are used to hoist loads consist of bolts and nuts, drive screws, threaded nails, or equivalently strong fastenings. Provisions addressing the hoisting of reusable pallets, bridles for handling flush end or box-type pallets, and the stacking of pallets, as well as a prohibition against the reuse of single-use pallets, are found in paragraphs (k)(2), (3), (4), (5), and (6).

Section 1918.63, titled ''Chutes, gravity conveyors, and rollers,'' and § 1918.64, titled ''Powered conveyors,'' contain requirements for the safe use of chutes, rollers and both gravity and mechanically powered conveyors. These sections are unchanged from the corresponding provisions of the proposal; in addition, these rules parallel the requirements covering similar equipment in the Marine Terminals Standard (see §§ 1917.48 and 1917.49). After this final rule is effective, there will thus be no regulatory inconsistencies with such equipment, which often physically originates on shore and extends onto the ship.

The principal hazards associated with the use of chutes, rollers, and gravity and mechanically powered conveyors are caught in, struck by, and crushing injuries and engulfment (e.g. by moving grain). Accordingly, the provisions in §§ 1918.63 and 1918.64 require, among other things, that this equipment be strong enough to handle the loads imposed, be equipped when necessary with sideboards, be free of splinters and sharp edges, have emergency stop controls (powered conveyors), have their pinch points guarded, be equipped with mechanisms to warn of conveyor startup, and be equipped with overload devices, guards, and other safety devices when necessary. For clarity, the lockout/tagout language has been amended to limit the conditions when power may be restored during the servicing of equipment.

Final rule § 1918.65 covers the use of all mechanically powered vehicles brought aboard vessels. Included in this category of equipment are all industrial trucks and all bulk cargo moving vehicles. These vehicles are also used in the shoreside aspect of marine cargo handling, and the hazards are essentially the same in both ''sides'' of cargo handling operations. The changes to this section of the final Longshoring Standard parallel those requirements found in § 1917.43, the corresponding section of the Marine Terminals Standard.

The requirements in final rule § 1918.65, ''Mechanically powered vehicles aboard vessels,'' are essentially unchanged from those proposed. Paragraph (a) states that this section applies to all types of powered vehicles used aboard ship to hand equipment or material. Paragraph (b)(1) requires any modification that could affect the capacity or safe operation of a vehicle to be done only with the manufacturers' prior written approval and/or that of a registered professional engineer experienced with the equipment. This requirement is necessary to ensure that operators of these vehicles, and other workers in the vicinity, are not injured in an accident involving an overloaded, poorly balanced, or otherwise unsafe vehicle.

Paragraphs (b) (2) and (3) require that vehicles be used within their rated capacities, and that the total weight of the lift made by two or more trucks working in unison not exceed the combined safe lifting capacity of the trucks used, respectively.

Final rule paragraph (c) addresses guards for fork lift trucks. The first provision requires all such trucks to be fitted with securely attached overhead guards that are designed to protect the operator from falling loads. Paragraph (c)(2) prohibits the use of overhead guards that obstruct the operator's view and stipulates that any opening in the top of the guard not exceed 6 inches in width or length (or be sized to prevent the smallest unit of cargo being handled from falling through the guard). Paragraphs (c) (3), (4), and (5) require overhead guards to be built so that: failure of the mast tilt mechanism will not displace the guard; the guard is large enough to extend over the operator during all operations; and that guards not be removed except when the presence of the guard would prevent entry into the work space (and then only if the operator is not exposed to overhead obstructions in the space). Paragraph (c)(6) requires fork lifts to be fitted with vertical backrest extensions if necessary to prevent the load from hitting the mast; the extension must provide such protection even if the mast is at maximum backward tilt.

Guards applicable to crawler-type, rider-operated cargo moving vehicles are covered by paragraph (d); at paragraph (d)(1), the final rule requires such vehicles to be equipped with an operator's guard that is built to protect the seated operator from contact with an overhead projection. Paragraph (d)(2) mandates that guards and their attachment points be sufficiently strong to withstand a load that is equal to the drawbar pull of the machine and that is applied horizontally at the operator's shoulder level; and paragraph (d)(3) states that guards are not required when the vehicle is used in situations that pose no threat to the seated operator of being hit by an overhead projection.

Final rule § 1918.65(d)(4) contains a requirement for rollover protection on bulk cargo moving vehicles (such as the type used to trim and position bulk cargo in underdeck spaces). Such protection is required on similar pieces of equipment used in construction industry settings, where the hazard posed by turnover also exists. Comments received supported this requirement for both shoreside and shipside equipment; however, these same commenters requested a phase-in period of two years because of the large number of machines that would need to be retrofitted (Exs. 19, 6–29, 6–31a, 8–8, NMSA *et al.*). In addition, testimony indicated that OSHA provided a similar phase-in period to the construction industry for rollover protection. (SEA Tr. p. 175) To provide sufficient time to retrofit the large number of vehicles in the industry and to be consistent with past OSHA policy, the final rule provides for a two-year phase-in period in this paragraph.

In addition, OSHA sought comment in the proposal on the need for rollover protection on bulk cargo moving vehicles used shoreside, i.e. in the marine terminal environment. As noted above, several commenters supported the addition of this protective measure to the Marine Terminals Standard (Exs. NMSA *et al.*, 19). To achieve consistency between the rollover protection requirements in the Marine Terminals and Longshoring rules, OSHA has provided for a similar two year phase-in period in § 1917.43(f).

Paragraph (e) of the final rule covers approved trucks. Several commenters pointed out that parts 1917 and 1918 use different terminology to refer to the same type of equipment (Ex. 8–8, NMSA *et al.*). In part 1917, the term ''approved power-operated industrial truck'' is used, while the longshoring rules uses the term ''approved power-operated vehicle'' (see § 1918.65(e)). Accordingly, OSHA has changed the term used in the final Longshoring Standard to ''approved power-operated industrial truck'' to be consistent with the language in part 1917 as well as OSHA's proposed ''Powered Industrial Truck Operator Training'' (61 FR 3092). As defined in paragraph (e)(1) of the final rule, an approved power-operated

industrial truck is one listed as approved by a nationally recognized testing laboratory. Paragraph (e)(2) requires such trucks to bear a label or other indication that the truck is so approved. Paragraph (e)(3) states that, in hazardous atmospheres, only approved trucks may be used.

Maintenance requirements for mechanically powered vehicles are addressed in paragraph (f), which requires, at paragraph (f)(1), that such vehicles be maintained in safe working order, not have their safety devices removed, and not be operated with any defect, e.g. a fuel system leak, that could affect safe operation. Requirements pertaining to braking systems, replacement parts, and repairs to the fuel and ignition system are covered in paragraphs (f) (2), (3), and (4). Batteries must be disconnected and/or stored energy discharged before repairs can be made to the primary electrical system of mechanically powered vehicles (see paragraph (f)(5)). Paragraph (f)(6) stipulates that only designated persons may perform maintenance and repair on these vehicles.

Final rule § 1918.65(g) remains as proposed. This paragraph requires that vehicles purchased after the effective date of the final rule be equipped with parking brakes. This provision received support, since nearly all pieces of newly manufactured equipment today have parking brakes and the value of such brakes in preventing accidents is widely recognized (NMSA *et al.*).

Paragraph (h) covers the operation of mechanically powered vehicles. Paragraph (h)(1) states that only stable and properly positioned loads that are within the rated capacity of the vehicle may be handled, and paragraphs (h) (2) and (3) require the drivers of these vehicles to ascend and descend grades slowly and to travel with the load trailing in those cases where the load obstructs the operator's forward view. Steering knobs are prohibited by paragraph (h)(4) except where the vehicle has power steering, and paragraph (h)(5) requires that a mechanism to alert the operator that the load has been engaged be provided if the vehicle is one that has a cargo lifting device with a means of engagement that is hidden from the operator's view. Paragraph (h)(6) prohibits any load on a mechanically powered vehicle from being suspended or swung over any employee; this provision is necessary to ensure that employees are protected from cargo falling from overhead loads. Paragraphs (h) (7), (8), (9), and (10) cover safe working surfaces, load engaging means, guarding of the edges of open deck barges and covered lighters, and precautions to be taken when employees ride on mechanically powered vehicles. Paragraph (h)(11) sets out the conditions under which employees may be elevated by fork lift trucks and includes specifications that must be met by platforms used for this purpose.

With the few exceptions noted above, OSHA received no comments on the proposed requirements in § 1918.65. These requirements, which pertain to mechanically powered vehicles used aboard ship, are essentially unchanged since the proposal.

Section 1918.66 of the final rule covers all cranes and derricks that are not part of a vessel's permanent cargo handling gear but are placed aboard a vessel temporarily to conduct cargo operations, as stipulated in paragraph (a). Examples of such equipment are mobile and crawler type cranes that are positioned on barges and used to load and discharge cargo. In developing this section of the final Longshoring Standard, OSHA relied on the corresponding provisions for cranes and derricks found in § 1917.45 of the Marine Terminals Standard. Once this final rule is effective, these provisions will thus be consistent for both aspects of the marine cargo handling industry.

Paragraph (a)(1) requires all such cranes and derricks to be certificated in accordance with OSHA's gear certification requirements (29 CFR part 1919), and paragraph (a)(2) requires the weight of any crane hoisted aboard a vessel to be posted on the crane. Requirements for rating charts, rated loads, exceptions to designated working loads, radius indicators, and operators' stations for cranes and derricks brought aboard vessels are shown in paragraphs (a) (3) through (7) of the final rule. Paragraphs (a) (8) through (12) contain provisions addressing counterweights or ballast, outriggers, exhaust gases, electrical equipment, and fire extinguishers associated with these cranes and derricks. Requirements specifying the amount of rope that must remain on the drum, how wire rope must be secured, and a prohibition against the use of fiber rope fastenings in hoisting operations involving these cranes and derricks are contained in paragraph (a)(13), while paragraph (a)(14) addresses brakes. Crane and derrick operating controls are required to be clearly marked by paragraph (a)(15), and paragraphs (a) (16) through (18) cover boom stops, foot pedals, and access to footwalks, cab platforms, the cab, and any portion of the superstructure of cranes and derricks brought on board for cargo handling purposes.

Operating precautions and requirements for cranes and derricks of this type are detailed in paragraph (b) of the final rule, entitled, ''Operations.'' The provisions in this paragraph cover the use of two or more cranes together, the guarding of the crane's swing radius, prohibitions against the use of equipment that could exert side loading stresses on the crane or derrick boom or the use of a crane or derrick that has a visible or known defect that could affect safety, and steps to be taken if a crane or derrick is to be left unattended (see paragraphs (b) (1) through (4)).

Paragraph (c) sets out a number of protections for employees being hoisted (including the use of anti-two-blocking devices on all cranes and derricks used to hoist personnel). For example, paragraph (c)(1) states that no employee may be hoisted by the load hoisting apparatus of a crane or derrick unless a platform having the characteristics specified in paragraphs (c)(1) (i) through (vii) is used. Final rule paragraph (c)(2) requires that the hoisting mechanism of cranes and derricks being used to hoist personnel operate in the power up and power down mode. This requirement is being brought into the Longshoring Standard from the Marine Terminals Standard (§ 1917.45(j)(2)) to provide parallel safeguards in both aspects of marine cargo handling operations.

Proposed paragraph (c)(3) required that cranes used to lift personnel be equipped with an anti-two-blocking device, a device which prevents the hoist block from coming into contact with the head block of the boom. Such ''two-blocking''' can occur when the operator is not paying attention to how high the hoist block is in relation to the head of the boom. After contact, continued hoisting of the block can cause the block to separate or break from the load line, causing the hoist block and load to fall. OSHA has determined that this requirement is necessary to prevent serious injury or death to employees being lifted by a crane; in 1988, the Agency adopted such a requirement for cranes used to hoist personnel in the construction industry (§ 1926.550(g)(3)(ii)(C), 53 FR 29139). Although OSHA's 1983 Marine Terminals Standard did not contain such a requirement, and inadvertently omitted this requirement in the proposal, the Agency has rectified this oversight in the final rule (see § 1917.45(j)(9)).

There were many issues related to anti-two-blocking devices that were raised by participants in the rulemaking, including whether OSHA has any data on risk or accidents relating to these devices; whether it is technologically

feasible to retrofit all maritime cranes with anti-two-blocking devices; and whether this requirement is truly necessary for safety in the marine cargo handling operations.

In response, OSHA notes the following. First, this issue primarily concerns mobile cranes, because most, if not all, container gantry cranes and portal gantry cranes are already equipped with anti-two-blocking devices. Mobile cranes are common on the Gulf Coast, but some are used at smaller ports on the East and West Coasts as well. In Gulf ports, very few ships that have containers that are stacked more than one or two high visit non-gantry crane facilities. Containers stacked only to this height are easily accessed with ladders, and this is the usual method of working them instead of using cranes to hoist the employees.

Several commenters noted that employees are rarely hoisted in this industry by non-container gantry cranes (e.g. mobile and crawler cranes) and that cranes used in longshoring have very long booms, unlike those in the construction industry, which greatly reduces the potential for two-block accidents in longshoring (NO Tr. pp. 165, 171, 172). The hoisting of employees by container gantry cranes is allowed when the spreader platform meets the requirements of § 1917.45(j) and the crane is not hoisting a load. Commenters also said that some stevedores employ rented cranes that may not have anti-two-blocking devices on them and that it may be impossible to retrofit some existing cranes with anti-two-blocking devices (NO Tr. pp. 17, 398). Also, ship's gear is often relied on for some specialized longshoring operations, and in this situation the stevedore has no control over whether or not the ship's gear has this safety device. One commenter stated that very few ships had anti-two-blocking devices on their cranes (NO Tr. p. 399).

Industry commenters who opposed the requirement for anti-two-blocking devices did not do so primarily on economic grounds, although they noted that installing an anti-two-blocking device was a significant expense. Anti-two-blocking devices were estimated to cost from $3,000 to $13,000 each (NO Tr. pp. 368, 708).

One commenter, who had purchased a new crane with an anti-two-blocking device, reported that it was necessary to disconnect the safety device because it was not possible to perform ''duty-cycle'' work of transporting lengths of steel. The company reported that it virtually never lifted personnel by crane (NO Tr. p. 708). Another commenter also testified that ANSI requires all cranes purchased after January 1, 1991, to be equipped with anti-two-blocking devices (NO Tr. p. 710). Several commenters questioned whether the anti-two-blocking requirement was necessary because there was a lack of accident data and its intended use would be so infrequent (Ex. 6–29a, NO Tr. pp. 164, 171).

Mr. James Pritchett, owner of Crane Inspection Services, an OSHA accredited agency, testified in New Orleans:

> One of the main reasons I came to the meeting that deals with regulations on cranes, I was delighted to read into the regulations that OSHA was considering anti-two-blocking on maritime cranes. Generally speaking, that is the rule for general . . . industry.
>
> I think a man is a man regardless of what location he's working in. I think he's important in construction, general industry, longshoring, or maritime the anti-two-blocking device is a safety device; it's not intended for an operational device.
>
> Also, it can be deactivated for duty cycle work. Its real intent is to be used for, or I should say, it really comes into play very importantly in a man lift situation (NO Tr. pp. 733–735).

As noted by several commenters, the purchase and installation of anti-two-blocking devices can be avoided through work practices and administrative approaches— cranes other than container gantry cranes are presently rarely used for lifting personnel (NO Tr. p. 171). On the other hand, where the need or frequency for lifting personnel is great, anti-two-blocking devices will offer greater protection for employees. In addition, OSHA is aware that mobile cranes equipped with anti-two-blocking devices are frequently rented to stevedore companies at East Coast marine terminals. The Agency concludes that the use of anti-two-blocking devices is necessary and feasible in marine cargo handling operations and requires their use in final § 1917.45(j)(9) and § 1918.66(c)(3).

In consideration of the above and consistent with past OSHA policies, the Agency believes the hoisting of employees by a crane to be an inherently dangerous practice that should only be conducted under very controlled circumstances. The common use of personnel platforms to transport employees by container gantry cranes, however, effectively controls these hazards. Nonetheless, in the case of cranes other than container gantry cranes, this practice should be avoided when other methods are feasible and present less of a hazard. OSHA therefore requires that all the provisions of § 1918.66(c) be met before employees may be hoisted by the load or hoisting apparatus of a crane or derrick, including the use of an anti-two-blocking device.

Final rule § 1918.66(d) addresses routine inspections of cranes and derricks that are not part of vessel's gear. Paragraphs (d)(1) and (d)(2) require that designated persons inspect each crane and derrick before each day of use and that such persons thoroughly inspect all functional components and accessible features of each crane or derrick at monthly intervals. Paragraph (d)(3) stipulates that defects found during such inspections that could potentially pose a safety hazard to employees be corrected before the equipment is used. In addition, this provision states that such repairs may only be performed by designated persons. Employees are required by paragraph (d)(4) to maintain records of monthly inspections for 6 months, either in or on the crane or derrick or at the terminal.

Protective devices are addressed by paragraph 1918.66(e). Paragraph (e)(1) states that moving parts, such as chains, gears, and sprockets, that could pose a hazard to employees during operations must be guarded, and paragraph (e)(2) requires that crane hooks be secured to prevent inadvertent disengagement of the load.

Paragraph 1918.66(f) addresses load indicating devices (LID's). To help prevent the overloading of cranes, LID's are currently required in both § 1918.74(a)(9) and § 1917.46. OSHA, however, had proposed not to carry over the requirements for LID's for vessel mounted cranes. Usually such devices rely upon boom radiuses (outreach) as an important factor in arriving at a load indication. When a crane is used aboard a ship, however, the LID's do not produce the same level of accuracy as for land-based cranes due to the motion of the vessel when a load is imposed. OSHA sought comment on alternative means to prevent the overloading of cranes used afloat. No comment was received. However, OSHA did receive comment supporting the continued requirement for LID's on cranes aboard a barge or vessel (Ex.6–2). OSHA is aware of the current practice of derating the capacity of the crane to account for waterborne conditions. This practice remains an acceptable method of preventing the overloading of waterborne cranes. Considering this and since the record supports the existing requirements, OSHA has decided to retain the language (as corrected) found in the current § 1918.74(a)(9) and has codified this at § 1918.66(f). Parallel

language has been included in final § 1917.46(a)(1)(ii).

Final § 1918.67 remains as proposed and carries over the requirements found in the current § 1918.75. These provisions require communication between the stevedore (i.e. the employer) and the officer in charge of the vessel whenever internal combustion or electrically powered tools, equipment or vehicles are brought aboard, and whenever the ship's power is needed for operating the employer's electrical tools or equipment.

Final § 1918.68 remains as proposed and provides for the effective grounding of all portable electrical equipment, such as saws, drills, grinders, etc., through a separate equipment conductor that either runs with or encloses both circuit conductors. This represents a clarification of the current rule. Double-insulated tools and battery-operated tools are excluded from the requirements.

OSHA proposed to delete the regulations under the current section titled ''Tools,'' (§ 1918.72), in the belief that the current OSHA General Industry Standards, subpart P, titled ''Hand and Portable Powered Tools and Other Hand-Held Equipment'' comprehensively addressed the subject of portable tools. Comments and testimony were received that supported the existing requirements for tools and in the final, OSHA has kept the existing Longshoring Standard's requirements. (See discussion regarding tools in the preamble of subpart A.)

Subpart H—Handling Cargo

Subpart H of the final rule is titled ''Handling cargo.'' This subpart specifically covers the actual shipboard cargo handling process. The sections that comprise this subpart (§§ 1918.81–89) address the hazards encountered by longshore workers while loading and unloading cargo. The primary hazard is being struck by the cargo, whether it is palletized, containerized, roll-on/roll-off (Ro-Ro), or otherwise packed or packaged. OSHA is retaining in this final rule those provisions found within subpart H of the Agency's current Longshoring Standard; carrying over applicable regulatory language from the Agency's rules for the shoreside segment of marine cargo handling (part 1917, the Marine Terminals Standard); and adding new requirements to address the hazards associated with the newer methods of handling cargo. For the most part, OSHA received widespread support for the changes that have been made to this subpart of the final rule (Exs. NMSA *et al.*, PMA *et al.*).

Final §§ 1918.81 through 1918.84 address those hazards common to the handling of break bulk (or general) cargo. Paragraph (a) of section 1918.81, ''Slinging,'' requires drafts to be safely slung before hoisting and any loose dunnage or debris to be removed to protect employees handling the draft. Other provisions in this section address cargo handling bridles, methods of slinging to prevent sliders, the safe use of case hooks, the hoisting of bales, the safe handling of unitized loads, manual guidance of loads, observation of the draft during hoisting, and provisions prohibiting the lifting of loads over employees or employees riding the hook or load. Proper slinging, building, bulling and stowing of drafts of cargo are essential to prevent cargo from coming loose from the draft and falling on or tipping over onto employees. These requirements are essentially unchanged since the proposal, and OSHA received no comments specifically addressing these provisions.

Section 1918.82, ''Building drafts,'' contains a requirement (in paragraph (a)) that drafts be built in a manner that prevents cargo from falling from the draft, or that means be taken to ensure the same result. In addition, paragraph (b) stipulates that buckets and tubs used to handle bulk or frozen cargo not be loaded above the height of their rims; this provision is necessary to ensure that pieces do not fall on employees below.

The tiering and breaking down of stowed cargo is covered in § 1918.83. Paragraph (a) requires the securing of cargo in ship's hold if such cargo could present a hazard to employees working in the hold. Precautions must be taken, as required by paragraph (b), in breaking stowed cargo; this provision is intended to prevent such cargo from falling on employees. Paragraph (c) of the final rule requires employers to check employees trimming bulk cargo into and out of the hold. This provision also requires employees working alone in a tank or compartment to be checked at frequent intervals to ensure that the employee is safe.

The bulling (dragging) of cargo is addressed in § 1918.84 of the final rule. Provisions in this section cover precautions to be taken during bulling, the safe use of snatch blocks, the securing of beam frame clamps, and a prohibition against the use of falls led from cargo booms of vessels to move scows, lighters, or railcars.

The final regulatory text of §§ 1918.81 through 1918.84 remains the same as the proposed text of these sections. In addition, OSHA received no comments specifically related to these requirements.

Section 1918.85, titled ''Containerized cargo operations,'' contains requirements addressing this modern method of cargo handling. This section applies to containerized cargo operations of any form (see definition of ''intermodal container'' at § 1918.2). These paragraphs track OSHA's current Longshoring Standard (part 1918), and the shoreside requirements found in OSHA's current Marine Terminals Standard (part 1917).

Section 1918.85(a) requires that each intermodal container must be marked with its gross, net, and tare (empty) weights. This paragraph of the final rule remains the same as the corresponding proposed paragraph.

Final rule § 1918.85(b) (1) through (5) address the determination of the weight of intermodal containers to be hoisted. The proposed provisions largely reflect the current rules in both the Longshoring and Marine Terminals Standards.

Paragraph § 1918.85(b)(6), allows closed dry van containers loaded with vehicles to be brought aboard vessels under certain conditions without first being weighed on a scale. The proposal added paragraph (b)(6) to this section to be consistent with OSHA Instruction STD 2.2, dated July 3, 1989 (Ex. 1–114). Those employers who choose not to comply with these conditions must weigh the container before loading. The same language is found in the Marine Terminals Standard at 29 CFR 1917.71(b)(6).

Paragraph (c) provides that no container(s) shall be hoisted if their gross weight exceeds either the weight marked in accordance with paragraph (a)(3) of this section or the capacity of the crane or other lifting appliance being used. Paragraphs (d) and (e) cover container inspection and precautions to be followed when containers are suspended. The requirements in paragraphs (a) through (e) are essentially unchanged from those in the proposal.

Paragraph 1918.85(f) addresses the lifting of intermodal containers. It requires that containers be handled using lifting fittings or other arrangements specified in paragraphs (f)(1) through (3) of this section unless the container is so damaged as to make special handling necessary. Paragraph (f)(1)(i) specifies that the hoisting of loaded containers 20 or more feet in length be done as follows: When hoisted by the top fittings, the lifting forces are applied vertically from a minimum of four fittings. Lifts that are less than vertical are permitted only when the container is an International Standards

Organization (ISO)[8] ''closed box container,'' the condition of the box is sound, the speed of hoisting and lowering is moderated, the lift angle is 80 to 90 degrees, the distance between lifting beam and load is at least 8 feet 2.4 inches (2.5 meters), and the length of the spreader beam is at least 16.3 feet (5 meters) for a 20-ft container and 36.4 feet (11 meters) for a 40-ft container. If these specifications are met, the final rule thus allows non-vertical lifts in limited situations. In contrast, proposed paragraph (f)(1)(i) would have required that loaded containers, when lifted from the container's top corner fittings, only be performed with a purely vertical force. The proposed language is identical to the practice spelled out in the ISO guidelines for handling containers as well as with several other standards or recommendations (Exs. 1–13, 1–115, 1–116, 1–117).

Currently, OSHA's Marine Terminals Standard's requirement for lifting containers allows non-vertical lifts under specified circumstances, i.e. it states that ''when hoisting by the top fittings, the lifting forces shall be applied vertically from at least four (4) such fittings or by means which will safely do so without damage to the container, and using the lifting fittings provided'' (§ 1917.71(f)(1)(i)). The Agency's current Longshoring Standard also allows non-vertical lifts, i.e. it states: ''All hoisting of containers shall be by means which will safely do so without probable damage to the container, and using the lifting fittings provided'' (1917.71(f)(1)(i)). A commenter noted that a decision of an Administrative Law Judge of the Occupational Safety and Health Review Commission (OSHRC) has held that these current OSHA rules allow any lift that has an angle greater than 60 degrees. (Continental Stevedoring and Terminals, Inc., 15 BNA OSHC 1966 (ALJ, No. 91–475, 1992) at CH Tr. p.157).

Ports or facilities that rely mainly on container gantry cranes generally do not perform non-vertical lifting of containers. Non-vertical lifting of containers is generally performed by mobile cranes, portal gantry cranes or by vessel's gear. A non-vertical lift is made by connecting four wires (or chain legs) either directly to the crane's hook or to a spreader bar hung from the crane. A spreader bar is a simple steel beam with two lengths of chain or cable on either end and a hook or other fitting on the chain legs to attach to the corner fittings of a container. Spreader bars are made shorter than the container, both for ease of maneuvering in tight lifts and to avoid snagging containers and ship parts or rigging. The longer the spreader bar, the more nearly vertical the lift on the container.

A box spreader can also be used to lift a container vertically using a single wire crane. A box spreader is essentially the same device that a container gantry crane uses to lift containers. However, a box spreader is both heavier and costlier than a simple spreader bar. In addition, box spreaders may introduce additional safety risks for longshoremen working on container tops. For example, the use of box spreaders requires additional maneuvering to position and secure the spreader to the container thus increasing employee exposure to falls (See, for example Montz at NO Tr. p. 101).

Mr. Vincent Grey appeared as an expert witness for OSHA in this proceeding. Mr. Grey has served as chair of the ISO Technical Committee 3874, Freight Containers, and is a recognized international expert on this mode of cargo handling. In addition to testifying on container lifting at the public hearings he also submitted written comments to the docket (Exs. 1–31, 6–28, 49, and 50). Mr. Grey supported the Agency's proposed requirement permitting only vertical lifting of containers (NO Tr. p. 70). According to Grey, containers are designed and have been tested only for purely vertical lifts. In addition, he explained that no one, including the ISO technical standards committee, has ever conducted a study or evaluation on the impact that non-vertical lifting would have on the containers (NO Tr. p. 70). He noted that any deviation from verticality adds compressive forces along the top rail and tension across the bottom of the container and that such forces could cause a container to fail, either crumpling across the top or ripping open along the bottom, with contents and container possibly falling on employees underneath (NO Tr. p. 74). Mr. Grey concluded that since containers were designed only for vertical lifts, non-vertical lifts reach beyond the margin of safety built into the containers (NO Tr. p. 72).

At the hearings during questioning, however, Grey admitted that he had never witnessed a container failure due to non-vertical lifting (Id. p. 79). He also admitted that non-vertical lifts are common around the world in smaller ports and less advanced countries that do not use container gantry cranes and that spreader bars of less than container length have been used for lifting containers around the world for more than 30 years (Id. pp. 83–84). When lifting is done without gantry cranes, Grey said, it is quicker and more efficient to employ spreader beams and perform non-vertical lifts.

A number of commenters opposed the proposed requirement. For example, John Faulk, representing NMSA, stated that there are no data on container failures caused by non-vertical lifts (NO Tr. p. 157). Instead, container failures are caused by overloading, improper packing, shifting loads, and defects in container construction, according to Mr. Faulk's testimony.

Hal Draper of the West Gulf Maritime Association agreed with Mr. Faulk's comments and noted that OSHA had not produced data indicating that accidents were occurring as a result of non-vertical lifts (NO Tr. p. 223). He also pointed out that the stevedore has no control over stowage, and that containers are frequently stowed in such a way that a non-vertical lift is required to unload a container or move it to gain access to other break bulk cargo. Mr. Draper also listed several situations in which it is not feasible to move a container with a vertical lift, such as: In midstream cargo operations; when inexperienced crane operators cannot handle the gear well; when the weight of a box spreader beam for a vertical lift is 7,500 pounds and may make the lift exceed the crane's capacity; when a container on a box spreader beam with cones would damage other cargo or containers when lowered; and when the gear necessary for a vertical lift increases the fall hazard for longshore employees because of the additional exposure to falls by employees needed to position the spreader. He also stated that simple bar spreaders work well for non-vertical lifts because they are light—a 36-foot long bar for lifting a 40-foot container weighs 3,000 pounds and provides 8 to 10 feet of head clearance for employees atop the container. Mr. Draper recommended that OSHA allow non-vertical lifts to be made between 80 and 90 degrees to the horizontal.

Other members of industry supported these comments. For example, Jim Heikkinen of Transocean Terminal Operators, Inc. stated that his firm had used spreader bars for many years without incident and that changing to a box spreader bar would increase both the weight of the gear and the risk posed to employees working containers (NO Tr. p. 679). Leo Naekel of Jore Marine Services reported that there were some lifts on barges that could not feasibly be made with a purely vertical lift (SEA Tr.

[8] The ISO is a worldwide federation of national standards bodies whose mission is to promote the development of international standards to reduce technical barriers to trade. The ISO standards are consensus documents and represent voluntary guidelines.

pp. 273–276), and Doug Stearns of Jones Washington Stevedoring Company stated that his firm sometimes had to use the ship's gear to move break bulk cargo (SEA Tr. p. 390). He also noted that the stevedore cannot require ships to carry a box spreader bar to make a pure vertical lift and that the weight of a box spreader beam can also be a problem. In addition, Mr. Stearns reported that he had never seen a container fail with a spreader beam but had seen many drop from box spreader beams. Mr. Stearn also questioned the Agency's estimates of the cost involved in changing to gear capable of vertical lifting.

Two commenters, however, supported the proposed prohibition of non-vertical lifts. For example, Douglas Getchell of the ILWU stated that non-vertical lifts should only be allowed when vertical lifts are technically infeasible; in his opinion, the alleged economic infeasibility of making vertical lifts in some situations should not be sufficient reason to allow such lifts (SEA Tr. p. 90). Arguing along the same lines, Albert Cernadas of the International Longshoremen's Association urged OSHA only to permit vertical lifts, with non-vertical lifts allowed only when there is no alternative (NO Tr. pp. 470–472). These same unions in the post hearing comment period, however, supported studying the risk consequences of a limited non-vertical lift. They agreed that there was a need to examine and scientifically to identify any conditions where a less than vertical lift could be permitted that would not place excessive stress on the containers and therefore not place workers at increased risk.

Several commenters pointed out that there are times when containers are stowed in the wings of the hold of a break bulk vessel, which makes a true vertical lift impossible (Exs. NMSA *et al.*, PMA *et al.*, 6–10, 6–16a, 6–28a, 6–29a). In such cases, the container must first be moved below the hatch and must sometimes be dragged by attaching cables or chains to the corners of one end of the container to pull it along the deck. The cumulative effect of these ''dragging'' movements is to increase the potential for container failure, and the increased wear and tear on the container presents a greater hazard of container failure than would a non-vertical lift.

After the public hearings, NMSA asked Mr. Grey to conduct an engineering study to determine whether OSHA should permit a minor departure from the 90 degree lift or prohibit non-vertical lifts in all circumstances. NMSA was joined in supporting the need for this study, in order to help resolve this controversy, by the ILA and ILWU. The study was designed to determine, through the use of mathematical models, the transverse and longitudinal stresses placed upon a container being hoisted from the four corner castings at the extreme of a minus 10° tolerance to verticality. The analysis of these compressive forces on these ''containers'' were then compared to the safe limits found in the ISO specifications.

In the introduction to the study, Grey explains the 1961 origin of the ISO vertical lift specification from his perspective as an active member of the technical committee. He indicated that the committee ''ordained that containers over 10 feet be lifted vertically when being picked up by their top corner fittings'' for several reasons (Ex. 80, p.2). The world was about to experience the explosion of the growth of containerization on the major trade routes. There was no industrial experience in handling containers, which were modified trailers from the highway trailer manufacturing industry. Partially out of concern for the uncertainties of the durability of the containers over their life cycles and partially as a matter of engineering convenience, the committee never considered the impact of the absolute verticality requirement on those facilities that only occasionally had to handle containers. Grey expressed ISO's main concern as follows:

> The ISO was essentially aimed at instituting an efficient way to move the world's international foreign trade tonnage and at the same time minimize labor cost and freight claims. Hence, the ISO committee's highest priority was to concentrate on handling the boxes in a fully automated system. (Id.)

As indicated above, no study has ever been conducted by the ISO or anyone else to establish criteria for acceptable tolerances to absolute verticality until Grey's study.

Based on the results of his study, Mr. Grey recommended that, under certain controlled conditions, lifts that were nearly but not totally vertical would be a practical and acceptable safety practice (Ex. 80, p.12). His analysis indicated that lifts that were no more than a ten degree deflection from vertical would not subject a container to undue stress that could compromise the structural integrity of the container (Id.). The ILA, ILWU, and NMSA, who collectively represent the principal interested parties in this rulemaking, supported Mr. Grey's findings, and this group stated its support in a joint post-hearing submission (Ex. 85). Mr. Grey's study thus corroborated earlier testimony presented by Hal Draper of the West Gulf Maritime Association that showed that 80-degree lifts added little additional force across either the top or bottom of containers (Ex. 6–29).

A prohibition on non-vertical lifts would primarily affect smaller ports, smaller employers, and ports that handle a mixture of break bulk cargo and containers, such as the Gulf Coast. Simple spreader bars have been widely used for 30 years to lift containers. Spreader bars are relatively light, simply constructed, and allow faster (less costly) container lifting than would box spreader beams. Box spreader beams, which would be required to provide a true vertical lift at each corner fitting, are heavier, costlier, and are infeasible to use in some situations.

After careful consideration of the Grey study and the relevant record evidence, and in light of the unanimous support of the major cargo handling stakeholders, the Agency has concluded that worker safety is not compromised, indeed, is not even affected, by accepting any lift that is 10 degrees within vertical to be a vertical lift for the purposes of paragraph (f). In addition, OSHA believes that this revision will also enhance enforcement efforts as well as voluntary compliance by eliminating the confusion and ambiguity that currently exists. The final standard thus allows containers to be lifted at an angle of 80 to 90 degrees providing the following conditions are also met: the container being lifted is an ISO ''closed box container'' (other types of containers such as flat racks and open top containers must be picked up vertically); the condition of the box is sound, and the speed of hoisting and lowering is moderated when heavily laden containers are involved. OSHA considers a heavily laden container to be one that is loaded to within 20 percent of its rated capacity. To lift at an 80 degree angle, the distance between the lifting beam and the load must be at least 8 feet and 2.4 inches (2.5 m), the length of the spreader beam must be at least 16.3 feet (5 m) for a 20-foot container and at least 36.4 feet (11 m) for a 40-foot container. This final language has been codified at § 1918.85(f)(1)(i) and is also being included in § 1917.71(f).

Paragraphs (f)(1) (ii), (iii), and (iv) contain requirements for hoisting from the bottom fittings, lifting containers by fork lift truck, and using other means of hoisting. Paragraphs (f)(2) (i) and (ii) establish requirements for intermodal container spreaders that employ lanyards and for the design and use of spreader twist lock systems.

In final rule paragraph (g), the Agency requires that a safe means of access and egress be provided to each employee who, due to the nature of the work, must work on the top of stowed containers—both above and below the deck. In practice, most employees gain such access by riding aboard safety platforms installed on container crane lifting frames. Such means are permissible when the lift is conducted in a manner consistent with design requirements found in the shoreside rules (§ 1917.45(j)). This provision remains unchanged from the proposal.

Paragraph (h) applies on vessels using any loaded intermodal container spreader. It prohibits employees from riding a spreader with a load attached. This provision is also unchanged from the proposal. A similar prohibition for the shoreside aspect of marine cargo handling (marine terminals) is included in this rulemaking (see § 1917.45(j)(9)).

When safer methods are available, such as safety platforms installed on the container crane lifting frame, OSHA requires in paragraph (i) that portable ladders not be used to gain access to the tops of containers that are stowed more than two high. This paragraph of the final rule is unchanged from the corresponding provision of the proposal.

Final rule § 1918.85(j) covers the hazard of falls from the tops of intermodal containers. In the proposed standard, the Agency would have required, to the extent feasible, the use of ''positive container securing devices'' after June 2, 1997, to eliminate work on top of containers. Employees who worked at facilities without container gantry cranes would have been required to wear personal fall protection equipment when working on top of containers except where this was not feasible. When fall protection systems were not feasible, employers would have had to alert employees to the hazard and instruct employees in minimizing the hazard. In a footnote to this provision in the proposed standard, a fall hazard was defined to exist when employees worked within three feet of the edge of a container that was 10 feet or more above the adjoining (lower) or next lower surface. In addition, an opening of 12 or more inches between containers constituted a fall hazard when there was a drop of 10 feet or more.

OSHA's current Longshoring and Marine Terminals Standards do not contain a specific container-top safety provision. However, the Agency has been concerned about falls from the tops of containers for many years and has cited employers for such hazards under the General Duty Clause (Section 5(a)(1)) of the Act and under § 1918.32(b) of OSHA's Longshoring rules (Ex. 1–139). This provision states, in the context of stowed cargo and temporary landing platforms:

> When the edge of a hatch section or stowed cargo more than 8 feet high is so exposed that it presents a danger of an employee falling, the edge shall be guarded by a safety net of adequate strength to prevent injury to a falling employee, or by other equal means of protection under the existing circumstances.

Although some employers questioned the applicability of § 1918.32(b) to container operations, a ruling by an administrative law judge established that that provision did indeed have application to container top on-deck exposures. The Agency's policy on this issue was spelled out in an instruction to its field staff (C.P.L. 2–1.17), issued in 1982 (Ex. 1–49). In that instruction, OSHA determined that § 1918.32(b) applied to containers but stated that there were situations where it would not be feasible to abate the container fall hazard. The directive instructed OSHA compliance officers to address the infeasibility issues in the following manner:

> A violation [of § 1918.32(b)] shall not be issued; however, OSHA should recommend and encourage the employer to work toward a solution and assist the employer in every way possible to effect a means of protection by advice, consultation and dissemination of information obtained during other inspections.

The Agency has issued few citations for the lack of fall protection on container tops. The marine cargo handling industry has sought a specific fall protection standard in this rulemaking, one that will be uniformly enforced to provide employees with needed protection against falls.

Falls from the tops of containers have resulted in a number of serious occupational injuries and fatalities (Exs. 1–18, 1–19, 1–20, 1–21, 1–22, 1–23, 1–24, 1–43, 1–67, 1–68, 1–100, and 1–108). Before the Longshoring and Marine Terminals proposal was published, the Agency contracted for and received a report on container top safety from Dr. A. J. Scardino (Ex. 139). Dr. Scardino is a registered professional engineer who is a nationally recognized expert in risk management and hazard identification. He has prepared several technical documents for OSHA, and has served as an expert witness in OSHA rulemaking and enforcement proceedings.

OSHA hired Dr. Scardino to conduct a representative study of the conditions, practices, procedures and hazards associated with containerized cargo handling. In his study, Dr. Scardino concluded, ''Work which requires employees to go aloft on container tops should be eliminated (to the extent feasible) through the use of engineering controls and work practices.'' (Id. p. 7). The proposed requirements for container top fall protection reflected many of Mr. Scardino's recommendations.

Fall Protection

Background. Fall hazards from containers have long been recognized by the stevedoring industry as both extremely dangerous and difficult to prevent. As early as 1968, U.S. terminal operators recognized the need to improve container top safety. That year Matson Terminals, Inc. developed the first system of container top fall protection (Ex. 1–53). In that system, Matson provided a D-ring fixture to be installed in the roof of its containers. Employees working aloft were provided with a safety belt and lanyard to secure to the D-ring. For a number of reasons, use of the system proved difficult, and it is not used today. Since then, numerous systems of fall protection have been developed, usually employing an anchorage point located either on a basket lowered by a crane, or on cables anchored to containers. In 1970, the Coast Labor Relations Committee of the ILWU raised the issue of working on containers with OSHA's predecessor agency, the Bureau of Labor Standards. In their letter of August 24, 1970 (Ex. 1–50), the Coast Committee asserted:

> Consider if you will the dangers attendant to working atop containers. They are not equipped with skidproof surfaces, there are no protective railings, and there are no requirements that safety belts be provided. In dry warm weather such work is dangerous enough, but the dangers are critically compounded when workers must labor atop these during windy and wet weather. At the very least, BLS regulations ought to provide that * * * safety belts be [required] for men working aloft.

As the containerized transport revolution progressed during the 1970's and into the 1980's, exposure to fall hazards on containers increased proportionately. Container use multiplied rapidly and ships were designed and built exclusively for the transport of containers. These ships eventually would carry several thousand containers, stacking them below decks and higher and higher on top of the deck. It became necessary to secure containers to each other to prevent unintentional movement during transit. To achieve this stability, stacking cones were developed that

workers placed in the corner castings of the container (an operation called ''coning'') while the containers were being loaded on the ship. This often required employees to work on top of the containers. The containers were further secured by installing bridging connectors across the corners of the top row of containers and lashing them diagonally to the deck with wire cables. Bridging and lashing operations also required working on top of containers. When the containers were unloaded from the ship, workers removed stacking cones from the corner castings of the container (called ''deconing'') while working on top of containers.

Virtually all of the original stacking cones were replaced in the early 1970's by twist locks, which eliminated the need for some lashing but still required workers to climb on top of the containers to place or remove the twist locks. Today twist locks are the most commonly used fitting for securing freight containers onboard vessels (Ex. 1–140). Newer semi-automatic twist locks (SATLs) were developed in the mid 1980's. The use of SATLs is now currently employed by most of the large shipping lines throughout the world and the United States. In fact, OSHA estimates that over 50 percent of ships calling in U.S. ports are already utilizing SATLs. (Ex. 2).

The use of SATLs avoids accidents and saves money. Unlike conventional twist locks, which must be inserted by workers on top of the container and manually locked, semi-automatic twist locks are inserted into the *bottom* of the container by workers standing on the dock; these devices lock automatically when placed on another container. Both SATLs and conventional twist locks can be unlocked by workers standing on the deck of the ship using an actuator pole, although on some container ships the stacks are so high that the pole is unable to reach the top container's corner from the deck.

When unloading using conventional twist locks, the upper container is first removed, leaving the twist locks on the top of the lower container. Workers must remove conventional twist locks from the top of that container before the spreader can attach to the corner castings. In contrast to conventional twist locks, SATLs are designed to remain attached to the bottom of the container being unloaded. SATLs are then removed by workers standing on the dock. Because workers do not need to be on top of the containers, the use of SATLs, therefore, eliminates worker exposure to fall hazards during this operation.

The use of SATLs also enhances productivity and reduces lashing costs (Ex. 1–140, p. 76; Ex. 1–141). A time-and-motion study that compares the performance of conventional twist locks to that of SATLs indicates an increase in productivity in the range of 25 to 29 percent. This translates to a 11.1 percent overall reduction in stevedoring costs (Ex. 1–141, pp. 4, 5; Ex. 2).

Another advance in securing containers in transit that eliminates the need for workers to go on top of containers is the development of above deck cell guides aboard vessels. Cell guides are rigid, structural members that form cells where containers are stowed. These cell guides allow for the ready placement of containers in a manner that prevents movement in transit. Although cell guides in the hold are common in container ships, above deck cell guides are far less common, constituting only 2 percent (Ex. 2, pp. 2–19) of container ships calling at U.S. ports.

In addition, OSHA is aware of the existence of positive container securing devices other than those discussed above, such as the SeaLand framing system (Ex. 1–57). The final rule uses the term ''positive container securing devices'' in the regulatory text. OSHA believes that this term is broad enough to allow for the SeaLand framing system and other innovative technological improvement.

While the use of SATLs is the most widespread method of positively securing containers that eliminates the fall hazard, OSHA is aware of certain problems, such as removing jammed SATLs and non-standardized locking systems on SATLs, that have been encountered with their application, use and design (Exs. 1–140, 1–142, 1–143, 1–144).

While container securing devices were undergoing rapid development, ports and shippers on the East and West Coasts were replacing older derricks and cranes that lifted cargo with a single wire with container gantry cranes that vertically lift from four points—one at each corner. In a container gantry crane, the crane operator is positioned directly above the load and moves with it—offering a much better view of the work. Today's container gantry cranes move along the pier on rails and employ automated box spreaders that automatically grip the container's four top corner fittings to lift it. The container is then raised vertically, carried horizontally to the dock (if unloading), and then set on a flat-bed truck trailer or similar vehicle. SATLs can then be removed before the container is finally lowered onto the truck's bed. The entire cycle for a container may take as little as a minute. In the container industry, cycle time for loading and unloading containers is critical.

For smaller ports, and especially ports on the Gulf Coast, that still must handle cargo in the more traditional ''break bulk'' mode, SATLs have not eliminated the need to go aloft (i.e. for employees to work on top of the containers). When containers are raised and lowered with a traditional single-wire crane typical of this part of the industry, the cargo sways and, in addition, the operator is in a cab on the dock and has a poor view of the loading process on deck. Without workers on the top of containers to steady and guide a container with cones in its bottom corners, the cones may damage lower containers, and such damage was reported by many commenters to the record. Having workers on the top of containers to guide the container also speeds the moving operations when using these types of cranes. Typically, when single-wire cranes are used to move containers, the crane will have a spreader bar almost as long as the container with two cables with hooks at either end that are manually inserted into containers' corner fittings. This typically brings a worker near the edge of the container. In this part of the industry, SATLs cannot eliminate the need for workers to go on the top of containers.

Negotiations between marine cargo employers and unions have in some instances resulted in added safety practices for container top work. For example, the Longshore Division members of the International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association (PMA), agreed upon a package of 25 work rules that were specifically designed to enhance safety at container terminals, including container top safety.

Internationally, a number of national and multi-national organizations have acted on the problem of container top safety. The International Labor Organization, in its Code of Practice for Safety and Health in Dockwork (Ex. 1–130), specifically requires that:

> A person gaining access to the top of a container should be adequately protected against the danger of falling where appropriate by wearing a suitable safety harness properly tethered, or by other effective means, whilst on the container.

In its Directions for Safety in Dockwork, the National Swedish Board of Occupational Safety and Health (Ex. 1–131) provides, in part, that ''Work on top of a container is only permissible if

measures have been taken to prevent falling down.'' In the port of Hamburg, Germany, a ''lash basket'' designed by a dockworker (Ex. 1–45) rides underneath the container spreader and moves between container stows. Here, the dockworker remains in this one person basket while performing his work, thus minimizing container top exposures. In the port of Bremerhaven, a specially designed ''rigger box,'' which is similar in configuration to some U.S. container cage designs, provides an anchorage for fall protection systems for dockworkers who work on top of containers (Ex. 1–52).

Several significant issues on container top fall protection arose during the rulemaking:

1. At what height, when working on top of containers, was there significant risk to employees? At or below 8 feet? At 10 feet? And what accident or injury data were available that supported a determination of a fall hazard?

2. When was fall protection technologically or economically feasible, whether from container gantry cranes or single-wire cranes?

3. Was fall protection economically feasible on containers? Was fall protection only economically feasible above 10 feet (for two-high stacks and higher)?

Determining the appropriate fall height was the most important issue in the rulemaking and received the most attention from stakeholders.

Comments by the National Maritime Safety Association (NMSA) and the Pacific Maritime Association (PMA) were representative of employer positions. Both PMA and NMSA supported the Agency's proposed requirement to engineer out employees' work on top of containers whenever feasible. Industry also supported the proposed requirement for fall protection only above the first level of containers (PMA *et al.* and NMSA *et al.*). Several smaller longshoring employers who use non-gantry cranes for lifting—where the proposed standard would have required personal fall protection—noted that in some cases the fall protection systems would themselves introduce additional tripping or snagging hazards for employees atop containers (CH Tr. pp. 22, 84, SEA Tr. p. 71, NO Tr. p. 223).

Although industry commenters asserted that relatively few fatalities had been caused by falls from containers, OSHA presented numerous instances of fatalities and injuries resulting from such falls over the past 20 years (Exs. 1–18, 1–19, 1–20, 1–21, 1–22, 1–23, 1–24, 1–43, 1–67, 1–68, 1–100, and 1–108). Labor unions consistently advocated the necessity of fall protection while working atop any container (Exs. 19, 78, 1–150, NO Tr. pp. 467–470).

In its comments and public testimony NIOSH (Ex 81, NO Tr. pp. 499–503) concluded that falls from a one-high container (8 feet or more) posed a significant risk of injury or death to an employee. NIOSH introduced a study of falls that showed injuries and deaths occurring from heights as low as 6 or even 4 feet, although none of these incidents were caused by falls from containers. NIOSH representatives recommended that fall protection be provided on one-high containers (Ex. 81, NO Tr. p. 500).

Subsequent to the hearing, the major marine cargo handling stakeholders (NMSA, ILA and ILWU) participated in joint discussions in an attempt to resolve their divergent positions as articulated during the hearings. These exercises proved successful as evidenced by a post-hearing submission (Ex. 85). The stakeholders resolved a number of issues, particularly with regard to container top safety. They agreed that fall protection is necessary when employees work on any container top of 8 feet or higher. In addition, they recognized the existence of situations when the use of fall protection presents a greater hazard than not using fall protection; they concurred on the definition of ''Fall hazard''; and they pointed out the need for flexibility in twist lock design.

In the final rule, OSHA is requiring that workers who must work atop containers be protected by fall protection in accordance with paragraph (k) when they are exposed to a fall hazard. NIOSH data demonstrating the risk of death or serious injury from falls as low as six feet are convincing and consistent with the injury and fatality reports from the Agency's IMIS data and concern for employee risk voiced by union presentations. Accordingly, the Agency has concluded that working even on the first level of containers poses a significant risk to employees.

Proposed paragraph (j)(1) contained a definition for ''fall hazard'' in a footnote. However, because ''fall hazard'' has application in other sections of the final longshore rule (§§ 1918.32(b) and 1918.85 (j), (k), and (l)), the definition of fall hazard is now included in § 1918.2, the ''Definitions'' section of the final rule. According to this definition, fall hazards (absent weather considerations) exist only within 3 feet (.92 m) of the container's edge (i.e., whenever the container top constitutes the employees work surface). As described in Dr. Scardino's findings, under no circumstances should the employee's center of gravity (the hips) be within 3 feet (.92m) of the unprotected edge of the container without fall protection (Ex. 1–139, p.3). This definition makes it clear that it is the unprotected edge where the hazard exists, and not necessarily the entire work surface. Additionally, any gap of 12 inches (.31 m) or more on a horizontal surface formed by containers is considered an unprotected edge, and a fall hazard would thus exist under this definition. (For further discussion of the gap issue see 51 FR 42685 and 53 FR 48186).

With regard to the feasibility of fall protection in cargo handling operations, many commenters supported the Agency's preference for engineering controls, such as SATLs, that would eliminate fall hazards, over the use of fall protection systems. Engineering controls cannot, however, completely remove the need to work on top of containers; operations such as lashing and installing bridging still require personnel to work on top of containers. However, for routine loading and unloading, SATLs remove employees from working on top of containers when gantry cranes are in use. Although SATLs and cell guides have imposed significant costs on the shipping and/or longshoring industry, the record clearly indicates that productivity gains have considerably offset the cost (see Section VI, Summary of the Final Economic Analysis and Regulatory Flexibility Analysis).

Where containers are lifted with cranes other than gantry cranes, SATLs have not eliminated the need for employees to routinely work on top of containers. The industry presented examples of container top loading and unloading operations from non-gantry crane ports for which fall protection was not possible or potentially more hazardous. In New Orleans, Mr. John Faulk, representing NMSA testified,

> This leads to the * * * issue of container top fall protection feasibility. On page 28614 of the Preamble, OSHA recognizes the fact that there may be particular instances when fall protection may not be feasible. Examples of situations where the use of fall protection systems may prove infeasible are found in Appendix 3 of the 1918 proposal, but only two examples are listed.
>
> NMSA recommends that the words ''stair step stows'' and ''valley stows'', as well as ''barges,'' as a type of vessel, be added to Example 2. A third example stating: ''When hoisting containers with single point suspension container handling gear''; and, a fourth example, stating: ''While attaching and detaching fall protection systems'' should also be added (No Tr. p. 167).

Dr. Scardino, in response to a question about providing fall protection during break bulk operations said:

* * * there are some circumstances, again, in order to have fall protection, you have to have some place to tie off * * *. When they have a single attachment for a boom crane, a truck crane, working shore side, the top of the container, all four corner castings, are occupied with the pendant lines, and they have to be physically removed. There is no place for the individual to tie off. And for the system to be effective * * * [it must] be attached to something.

So in some break bulk situations, unfortunately, there's no place to tie the individual off to, other than not to do the operation at all (SEA Tr. p. 81).

The Agency agrees with these findings and the final rule recognizes that fall protection may not be feasible in all cases where work atop containers is performed.

The phase-in period. In view of the recent technological improvements in positive container securing devices indicated above, OSHA finds that many work operations, notably coning and deconing, that expose workers to container top fall hazards can now be eliminated. As noted above, SATLs have proven to be particularly effective when container gantry cranes are utilized (Ex. 1–140). In fact, the use of these devices (e.g., SATLs) in these circumstances can, in most instances, eliminate the need for workers to go on top of containers. In light of this, two years after the date of publication of this rule, § 1918.85(j)(1) will prohibit the performance of coning and deconing on top of containers being worked by a container gantry crane. OSHA has estimated that more than 50 percent of ships calling at U.S. ports already utilize SATLs (Ex. 2). Since it is OSHA's policy to allow a reasonable time to come into compliance with engineering controls in the final standard, the Agency is allowing two years for the implementation of positive container securing devices.

OSHA recognizes that positive container securing devices will not entirely eliminate the need for workers to go on the top of containers. Certain container placement or securing tasks, in addition to coning or deconing, must still be performed. In these situations (e.g., securing bridge clamps or releasing jammed twist locks), a comprehensive fall protection program must be implemented.

Where cranes other than container gantry cranes are used to handle containers, OSHA recognizes that the use of SATLs may not be feasible. The precise placement capabilities of a container gantry crane are far superior to other lifting devices, thus facilitating the use of SATLs. This enhanced capability is due to the four point suspension system of the container gantry crane, which provides greater stability and control of the container being handled, enabling the crane operator to place the container without assistance. Container operations where the spreader is suspended from a single point, on the other hand, have far less stability and control and typically require the assistance of other employees in the placement of containers. Such employees may be exposed to fall hazards. Further, as discussed above, even if SATLs are feasible when other than gantry cranes are being utilized, their use may not substantially reduce the need for employees to work on container tops in the handling of containers. (This is unlike the situation with container gantry cranes, where the use of positive container securing devices, e.g., SATLs, virtually eliminates the need to work on top of the containers.) Therefore, OSHA is not requiring the use of positive container securing devices when containers are being handled by other than container gantry cranes.

With regard to the feasibility of fall protection, OSHA recognizes that, in this industry, there may be particular instances when fall protection may not be feasible. An example of a circumstance where fall protection may not be feasible is the placement of an overheight container on a chimney stow using gear that requires the manual release of hooks. In these types of situations, the standard requires the employer to:

1. Make a determination that an employee will be exposed to a fall hazard but that the use of fall protection is not feasible or would create a greater hazard;
2. Alert the exposed employee about the hazards involved; and
3. Instruct the exposed employee how to best minimize the hazard.

OSHA emphasizes that such situations are not common and that when they do occur, the burden is on the employer to fully comply with these requirements before the employee performs the work. In fact, the Scardino study indicated that a ''specific set of circumstances could not be framed'' where fall protection might not be feasible (Ex. 1–139, p. 1). Claims of infeasibility of fall protection will be closely scrutinized by the Agency in its enforcement of the final rule.

As was proposed, the final standard in § 1918.85(k) establishes the technical requirements for container top fall protection systems (See § 1918.2). Most of the requirements in this paragraph are basic to any occupationally related fall protection system. They address the design, selection, care and proper use of personal fall protection equipment. These elements include an anchorage, connectors, a body harness, lanyards, and deceleration devices. For further information regarding fall protection systems see § 1910.66 and § 1926.502.

In addition, § 1918.85(k)(7) and (10) have been specially crafted for the container top situation. Paragraph (k)(7) addresses the situation where a container gantry crane, or its extension, is being used as the anchorage point for the fall protection system in use. Under these circumstances, the crane must be placed in the slow speed mode and equipped with a remote shut-off switch that is in the control of the tied off employee. In addition, an indicator must be within sight to inform the employee when the remote shut-off switch is operational (CH Tr. p. 28, SEA Tr. pp. 289–290). As proposed, this paragraph included language requiring that all crane functions be stopped by a remote shut-off switch. It was pointed out during the hearings that this could lead to an unsafe condition (e.g. rendering the crane inoperable when it was needed for an emergency rescue) (SEA Tr. p. 113). OSHA agrees with this position and the final language has been amended to limit the operation of the remote shut-off switch effects to the trolley, gantry, and hoist functions (i.e. those functions that directly affect the employee on top of the container) of the crane.

OSHA has used the term ''designated person'' throughout this rulemaking (see definitions—§ 1918.2) to identify a person who has a special skill in a particular area to do safety-related functions. Regarding container top fall protection systems, a ''designated person'' could do the daily inspections required in §§ 1918.85(k)(2) and (11). In the proposed rule, however, OSHA believed that the complexity of systems design decisions as required by §§ 1918.85(k)(6) and (8) should be made by a registered professional engineer. While one commenter contended that, based on his experience, engineering certification in this area was not readily available (NO Tr. p. 574), the record also contains a post hearing submission that includes a list of such engineers (Ex. 84). OSHA now recognizes that these specialized engineering skills may not be readily available in some locations. Consistent with other OSHA standards, the final rule provides flexibility by allowing the certification of equipment by a ''qualified person.'' A footnote in paragraph (k)(6) defines what is meant by the term ''qualified person'' for the purpose of this paragraph. To be considered qualified, a person must have a recognized degree or professional

certificate and extensive knowledge and experience in the subject field, and must be capable of design, analysis, evaluation and specifications in the subject work, project, or product.

OSHA also recognizes that manufactured fall protection components are extensively tested and certified by qualified persons working for the manufacturer (probably registered professional engineers). In complying with paragraph (k)(8), the employer may rely on these manufacturers' certifications with respect to unmodified equipment that is being used according to manufacturers' recommendations. Job-made components, on the other hand, must be tested and certified by a qualified person.

As noted above, the other fall protection requirement unique to longshoring operations in the final rule is paragraph (k)(10). This paragraph addresses the situation where the employee is transported by a device, such as a safety cage, attached to a container gantry crane spreader. Such a device is required to have a secondary means of attachment to the spreader besides the primary attachment mechanism (usually a hydraulic twist lock mechanism) to prevent accidental disengagement (See NMSA *et al.*). However, OSHA is aware of a system used by the Massachusetts Port Authority which employs a mechanical device that does not allow the automated box spreader to release the safety cage unless deliberate action is taken by employees using the cage. The device mechanically prevents two of the spreader's twist locks that are on opposite corners from disengaging the cage. In order for the crane operator to release the cage from the spreader, the personnel in the cage must first lift a lever that allows the two twist locks to disengage. The crane operator can not override this back-up system, and the spreader's hydraulic system also can not override it. The only way to override the system would be to disassemble it. This device, although not technically a secondary means of attachment, meets the intent of the proposed regulation. Therefore, the final regulation has been modified to allow this device by changing the wording from the proposed ''secondary means of attachment engaged'' to read a ''secondary means to prevent accidental disengagement and the secondary means shall be engaged''.

Final § 1918.85(k)(13), which requires the employer to establish a procedure that addresses the safe retrieval of an employee in the event of a fall, is carried over from the proposal. This provision received wide support from commenters (Ex. NMSA *et al*).

Final § 1918.85(l) provides for fall protection in container operations that require employees to work along unguarded edges (other than on container tops). In these situations, fall protection meeting the requirements of paragraph (k) of this section must be provided where the fall distance is greater than eight feet (2.4 m). This primarily addresses work operations such as lashing, locking and unlocking twist locks from surfaces other than container tops, or signaling to direct the placement of containers. This is consistent with OSHA's approach in this rulemaking to fall distances in §§ 1918.32(b), 1918.85(j), (k), and (l). (See definition of ''fall hazard'' at § 1918.2.)

Final § 1918.86, titled ''Roll-on roll-off (Ro-Ro) operations,'' which was a new section in the proposal, addresses operations aboard Ro-Ro vessels. The emergence of Ro-Ro vessels is a recent development and is not addressed in the current rules. Along with container operations, this new section has provisions that address advances in modern technology in the marine cargo handling industry. The cargo generally can be driven on or off the vessel by way of ramps and moved within the vessel by way of ramps and/or elevators. Traffic patterns can vary greatly in these vessels. Some Ro-Ro vessels carry intermodal containers both on deck and below. Examples of such vessels are car carriers, which simplify the import and export automobile trades, and stern or side port combination carriers, which provide water carriage for wheel mounted and containerized cargo. Commonly such vessels are fitted with ramps that extend to the dock or wharf, and are fitted with internal ramps and/or cargo elevators (lifts). In this manner, cargo is either driven through the vessel from deck to deck until reaching its final stowage location, or hoisted by cargo elevator to its proper deck and then driven to its final stowage location. Once positioned in its stowage location, the wheeled cargo is lashed to securing fittings provided on the deck. In such operations, lashing personnel are exposed to being struck by vehicular traffic. In addition, other employees involved with loading or unloading wheeled cargo, both drivers and pedestrians, are exposed to traffic hazards. This section addresses the hazards attributable to this process, in which employees and vehicles are in closely confined and marginally illuminated space.

In § 1918.86(a), OSHA proposed that an organized system of traffic control be established and maintained at each entrance and exit ramp. The highest concentration of vehicular and pedestrian traffic in Ro-Ro operations, and thus the area where substantial accident potential is most pronounced, is the area on and around ship-to-shore access ramps. Ramps inside the vessel, although generally not as congested as ship-to-shore access lanes, must also be addressed by the traffic control system if they experience a periodic traffic flow that warrants such control. These provisions, as proposed, received wide support and remain identical in the final (Exs. 6–19, NMSA *et al.*, PMA *et al.*, SEA Tr. pp. 455–458).

Final paragraph (b), which remains as proposed, addresses the hazard of exceeding the capacity of the ramp used to transfer cargo. Ramps must be plainly marked with their load capacity and these capacities must not be exceeded (Ex. 1–5).

Paragraph (c) provides protection for employees that use the ship's ramp for access. OSHA proposed that a physical separation be provided to separate the lanes of travel for pedestrians and vehicles. When the design of the ramp prevents physical separation of pedestrians from vehicles, OSHA proposed that a signaler direct traffic and not allow concurrent use. Much of the comment and testimony on this paragraph addressed the issue of the requirement of a signaler and the prohibition of concurrent use (Exs. 6–16a, 71, NMSA *et al.*, PMA *et al.*, SEA Tr. pp. 207, 244). One view presented at the hearings asserted that, if there were no physical separation on the ramp, simultaneous use of the ramp by vehicles and pedestrians (longshore workers returning to the ship to unload vehicles) can only be achieved by posting a signaler at each stern and side port ramp (Ex. 19). Others maintained that this end can be achieved in many different ways and suggested that performance language would be more appropriate (NMSA *et al.*, PMA *et al.*). OSHA, in the final regulation, requires a physical separation when pedestrians and vehicles are using the ramps simultaneously. Examples of physical separation are railings, stanchions with wire, rope, or other material separating vehicle and pedestrian traffic. Lines painted on the ramp or plastic cones do not meet the intent of the regulation. When physical separation is not possible, a positive means shall be established to prevent simultaneous use of the ramp by vehicles and pedestrians. Examples of positive means include a person controlling the use of the ramp or a signal system. Verbal instructions and training alone are not sufficient.

The proposed regulation has been modified in the final rule to reflect these changes.

Final paragraphs (d), (e), and (f), addressing ramp maintenance, hazardous routes and air brake connections, respectively, received support and remain the same as the proposal (Exs. NMSA *et al.*, PMA *et al.*). These provisions recognize the unique features of modern Ro-Ro vessel ramp design that allow for multiple access destinations.

Final paragraph (g) requires that flat bed and low boy trailers be marked with their cargo capacity and not be overloaded. Comment and testimony was received that addressed the problems with marking the cargo capacity on equipment that may be old, retrofitted, or modified:

> The point being that there's a lot of old equipment out there that has been patched up. Various features of the chassis has [*sic*] been changed so that there's no manufacturer out there that would come in and say yes, that's my vehicle or my chassis and I sold it to you 10 years ago and it was rated at this capacity, and yes, it's this capacity now.
>
> So you're not going to get a manufacturer to do it because they have no idea what you've done to that chassis, so it's kind of left up to the employer by the owner of that chassis. (SEA Tr. p. 414.)

Similar arguments were received in both testimony and comment recommending that OSHA exempt existing equipment from this requirement, having it only apply to new equipment purchased after the effective date of the final rule (Exs. 78, NMSA *et al.*). On the other hand, Doug Getchell of the ILWU recommended that OSHA require these markings on existing equipment as well.

> There's some very durable equipment out there you're talking about that could be in play for a long, long time to come.
>
> I believe that our position is that all of the equipment should be adequately proof-load tested before it's put back into use again. (SEA Tr. p. 105.)

After careful consideration, OSHA believes that ''grandfathering'' of this requirement is inappropriate. In the absence of such a marking, the capacity of the flat bed or low boy trailer would not be known. These trailers are used to transport break-bulk cargo into the holds of RO-RO ships, often down steep ramps. Overloaded trailers would constitute a serious hazard to employees. However, since the record indicates that much unmarked equipment is presently in use, the final rule allows the period of one year from the publication date of this standard for compliance with this provision. The similar provision in § 1917.71(f)(4) will also have a delayed effective date.

Paragraphs (h), (i), (j), (k) and (l), addressing cargo weights, tractors, safe speeds, ventilation, and securing cargo, respectively, received general support and remain in the final as proposed (Exs. NMSA *et al.*, PMA *et al.*). In addition, ventilation issues regarding Carbon Monoxide (CO) are discussed at length in subpart I, below.

Proposed paragraph (m) required high visibility vests or equivalent protection for authorized personnel working in Roll-on roll-off operations. This is similar to an existing requirement in the Marine Terminals Standard, § 1917.71(e), which specifies that employees working in the immediate area of container handling equipment or in the terminal's traffic lanes must wear high visibility vests, decals, reflectors or equivalent protection.

Several issues arose in the rulemaking in regard to the requirement for wearing high visibility vests: (1) Whether the Agency had any data or analysis that indicated that there was significant risk in wearing only reflective decals on hard hats; (2) whether replacing hard hat decals with high visibility vests will substantially reduce that risk; and (3) whether the Agency had largely underestimated the cost of providing high visibility vests. They argued that since the true cost was much higher than Agency estimates, and the attendant risk reduction had not been demonstrated, the Agency had failed to show that the vests are reasonably necessary for worker protection.

Regarding the lack of data issue, OSHA believes that the record clearly indicates several fatalities that may have been prevented if the employee had been wearing high visibility vests (Ex. 1–78, 1–89, and 1–103).

Regarding the second issue, some commenters argued that a reflective decal or decals placed on the employee's hard hat would be equivalent to the protection afforded by a vest (Exs. 6–29a, NMSA *et al.*, NO Tr. pp. 154–156, 459.) Several other industry representatives reported difficulty in getting workers to wear vests without discarding them each day (NO Tr. p. 211). Employers from the Gulf and West Coasts reported that for much of the year vests added to the discomfort of working in the heat which was an additional reason why employees did not wear them (NO Tr. pp. 155, 212). Other commenters noted that vests in cold climes often disappeared under coats. For example, a representative from NMSA gave this testimony:

> If the vest was visible, of course. The more visibility the better it is * * * but in some cases the vest is covered up by an outer garment, in cold weather conditions or foul weather, and it's not visible anyway. The hard hats are still being worn by the man with the reflective devices. The more high visibility you could provide, of course, the better it is for everybody. We don't want to be limited to just the vest (NO Tr. P. 356).

In addition, commenters reported that for some operations, such as lashing containers, the vests themselves had snagged on ladders or gear thus causing accidents (NO Tr. pp. 683 and 690). As a consequence, several stevedores who currently supply vests do not require employees to wear them while performing container lashing work. OSHA notes that these paragraphs do not require the wearing of high visibility vests during the lashing of containers.

NIOSH supported a requirement that employees wear reflective material on both their vests and hard hats:

> The portion of the body that's covered by a hard hat that is visible from a distance is considerably smaller than the portion of the body covered by some sort of an outer garment, be it a vest or a coat or what not * * *. I would strongly encourage that reflective material on hard hats be in addition to some of the material on the trunk of the body. (NO Tr. p. 500.)

Further testimony on the issue came from a representative from the ILWU:

> We've submitted comments, or support the notion, that particularly during daylight hours, the vest is far more visible than the hard hat. In terms of the amount of square inches, if you will, [the vest] is significantly greater than that provided by a hard hat * * *. Would you agree that the visibility of an individual with a vest and a hard hat during daylight hours is greater than with an individual with just a hard hat? (NO Tr. p. 355.)

In addition, although there are no existing U.S. Government or national consensus standards specific to longshoring on the amount of high visibility material required on safety clothing, international standards do exist. The British/European standard (BS EN 471:1994) prescribes minimum amounts of fluorescent and retro reflective material for high-visibility clothing (Ex. 71).

With regard to the equivalent protection issue, OSHA's current position was discussed in the preamble to the proposed standard. The Agency indicated that the reflective area of a decal on a hard hat is substantially smaller than that of a vest, and has no protective value if the worker is not wearing the hard hat. In fact, hard hats are not required for all work areas in marine terminals and vessels unless there is an overhead hazard (NO Tr. pp.

353–354). Furthermore, the reflective value of decals on hard hats is lost when the employee bends over which occurs during the lashing or unlashing of automobiles. In contrast, the reflective value of a high visibility vest is not only far greater but is not lost even during lashing or unlashing operations. Based on its enforcement experience, the Agency is aware that high visibility vests are available in various sizes (and many types are adjustable) including ones that are large enough to wear over cold weather apparel. OSHA's position regarding decals remains unchanged from the proposal.

With regard to the final issue, numerous employers and their representatives said that the Agency had grossly underestimated the costs of supplying vests in the preliminary regulatory impact analysis. They argued that reflective vests would have to be replaced every time they were required and that the costs would be excessive (Exs. NMSA *et al.*, 80, NO Tr. p. 557). For example, Paul Robinson of Crowley American Transport said that his company, which requires all employees to wear vests, had spent $57,000 in the past year for vests. OSHA acknowledges that some employers have a significant problem controlling the issuance of vests. However, the Agency sees little difference between this equipment and other personal protective equipment, such as hard hats, which the industry has been able to control. In the preamble to the proposed standard the Agency had estimated that 75 percent of the employees in the industry would require a new vest only once a year. The Agency has revised its estimate for supplying high visibility vests to the industry (see Section VI, *Summary of the Final Economic Analysis and Regulatory Flexibility Analysis* later in this preamble).

The Agency has concluded that wearing high visibility vests significantly reduces the probability of injury when working on RO/RO vessels or container handling ashore because it makes the worker much more visible in a busy, congested operation that involves working around fast-moving vehicles. Final paragraph (m), therefore, requires that only authorized persons be permitted on any deck while loading or discharging operations are being conducted and such persons shall be equipped with high visibility vests or equivalent protection. In addition, a footnote has been added indicating that decals on hard hats will not be considered equivalent protection for the purposes of this paragraph. However, OSHA will accept high visibility equipment meeting the European standards as providing protection that is equivalent to that required by paragraph (m). A note has been added with the minimum requirements of high visibility and retroreflective material in square inches and square meters. The parallel provision in the Marine Terminals Standard will be revised accordingly in final § 1917.71(e).

Proposed paragraph (n) provided signaling requirements when vehicles were being maneuvered into stowage positions when other personnel are in the adjacent vicinity. OSHA received several comments on this issue suggesting that a performance-based requirement, one stating the goals to be achieved, would be more appropriate than the specifications contained in the proposed provision (NMSA *et al.* and PMA *et al.*). Since the objective of this provision is to prevent vehicles being driven into stowage positions from striking employees who are lashing these vehicles into place, and since the proposed requirement allowed employees only one way to achieve this goal, i.e. under the direction of a signaller, OSHA has developed a more performance oriented requirement for the final rule to provide both protection and enhanced flexibility. In the final standard, this provision reads as follows:

Vehicle stowage positioning. Drivers shall not drive vehicles, either forward or backward, while any personnel are in positions where they could be struck.

Section 1918.87, ''Ship's cargo elevators,'' sets out requirements for the use of shipboard elevators (lifts) that are most common on many different Ro-Ro and combination carrier vessel designs. In approaching the issue of elevator usage, OSHA remained mindful of foreign vessel prerogatives. The provisions of the final rule are protective of U.S. longshore workers, but are not expected to have an impact on any other nation's vessel designs.

Final paragraphs (a), (b) and (d), addressing safe working load, load distribution, and open deck barricades respectively, received support and they remain essentially the same as the proposal (NMSA *et al.*, PMA *et al.*).

Proposed paragraph (c), however, would have allowed the vehicle driver to ride the cargo elevator when that driver's vehicle was being lifted on the elevator. Several commenters wanted the language to be changed to allow persons other than the driver to ride the elevator with the load (NMSA et al., PMA *et al.*). The driver is allowed on the elevator to make sure the brakes are applied to prevent the cargo from rolling. However, allowing other personnel to ride the elevator presents an unnecessary danger if a fall hazard, as defined in § 1918.2, is present. If riding the elevator does not present a fall hazard, however, the record does not support the proposed restriction. Therefore, OSHA has modified this paragraph to prohibit personnel from traveling on the elevator if fall hazards are present.

Section 1918.88, ''Log operations,'' is also an entirely new section addressing the hazards associated with loading logs from the water into a vessel. This is a particularly hazardous operation both because of the location where it occurs (on the water) and the nature of the cargo. Logs loaded from the water have usually been in the water for a long time, causing them to absorb water. The extra water adds to their weight and loosens the bark, making the log surface very unsure and slippery. In response to comments, the provisions in proposed § 1918.38, ''Log rafts,'' which was proposed in subpart D (Walking/Working Surfaces), are being moved to this subpart and renumbered § 1918.88(h) (Exs. NMSA *et al.*, PMA *et al.*).

Commenters argued that proposed paragraph (a), ''Working in holds,'' could be incorrectly interpreted to mean that employees would be required to leave the hold of the vessel whenever and wherever logs are being loaded. This language has been clarified to require that employees need to remain clear of areas where they may be struck by logs. This suggested language received widespread support (Exs. 35, 78, NMSA *et al.*, PMA *et al.*).

Final paragraph (b) requires that employees working on log booms wear personal flotation devices in accordance with § 1918.105(b)(2). This requirement is in the current regulation, but was not in the proposal. During the hearings, testimony was given supporting the retention of language of the current standard which requires the wearing of personal flotation devices when working on log booms and such language is in the final regulation (NO Tr. pp. 447–449).

Final paragraph (c) requires the employer to ensure that each employee wears appropriate footwear to climb or walk on logs. Such footwear typically is spiked, also known as ''caulked'' shoes. Such specialized footwear may be styled like a sandal that attaches to existing footwear, and is specifically designed for working logs. Comment was received suggesting that OSHA should not determine who would provide this item of personal protective equipment (PPE) (Exs. NMSA *et al.*). OSHA has a standing policy regarding the provision

of PPE. See subpart J for a discussion on this issue. OSHA has interpreted its general PPE standards to require employers to provide and to pay for specialized PPE required by the company for the worker to do his or her job safely and in compliance with OSHA standards. OSHA considers special footwear needed for walking on logs to be such equipment. The final remains essentially the same as the proposal, with the term ''caulked sandals'' added as an example of such special footwear.

Paragraphs (d), (e), and (f), addressing lifelines, Jacob's ladders and life-rings, received support and remain the same in the final as proposed.

Final paragraph (g) requires that a rescue boat be available when employees are working on log rafts or booms. Commenters presented two positions on this issue. One commenter urged OSHA to require that the rescue boat be powered, citing the hazard of employees falling into the water while loading logs from the water and being carried away by the river current. Requiring that the rescue boat be powered would allow an employee who falls into the water to be rescued quickly, in the opinion of this commenter (Ex. 19). An opposing view was expressed by other commenters, who argued that the fact that other lifesaving equipment, such as the life-ring required to be available by paragraph (f), was already required and the fact that a non-powered boat was often all that was necessary, made any requirement for a powered rescue boat to stand by while employees were loading logs excessive (Ex. 37, SEA Tr. pp. 412–413).

The final rule adopts a performance approach and requires that rescue boats that are ''capable of effecting immediate rescue'' be available during logging operations. The employer must thus decide, based on local conditions, what type of rescue boat is appropriate to the immediate circumstances. For example, when currents are fast enough to carry an employee away, the final rule would require employers to make a powered rescue boat available. It should be noted that OSHA's enforcement policy regarding drowning hazards incorporates guidelines developed by the U.S. Army Corps of Engineers (Exs. 1–159 and 1–160). These guidelines require a powered rescue boat to be available whenever the waters are rough or swift or where manually-operated boats are not practicable. In addition, OSHA requires that anti-drowning measures be taken in scuba diving at a trigger current of one knot (§ 1910.424(b)(3)). In light of these discussions and to assist employers in complying with these rescue provisions, the final rule specifies in a note that powered rescue boats are required when the current exceeds one knot.

As discussed in the beginning of this section, proposed § 1918.38 has been moved to this subpart and has been renumbered § 1918.88(h) (1), (2) and (3). Although paragraph (2) in the proposal required walking sticks on the ''off-shore side of the vessel,'' commenters pointed out that logs can be worked on both sides of the vessel. (Exs. 36, 78). OSHA has amended the proposal accordingly, requiring in the final that walking sticks ''* * * extend along the entire length of all rafts on the sides of the vessel being worked * * *''

Proposed § 1918.89, addressing the handling of hazardous cargo, was carried over from the existing Longshore Standard (§ 1918.86). OSHA requested comment from the public asking if the requirements in proposed paragraphs (a) and (c) were unduly repetitious. Commenters indicated that these requirements were, indeed, redundant and, were therefore unnecessary (Exs. NMSA *et al.*, PMA *et al.*). OSHA agrees that these requirements are already addressed in the Hazard Communication and the Emergency Response requirements found in subpart A and subpart I, respectively, and has removed these provisions from § 1918.89 in the final rule. The text of proposed paragraph (b), which required that hazardous cargo be secured to prevent spillage, now becomes the entirety of the text of final § 1918.89. For consistency, these changes are reflected in part 1917 (§ 1917.22).

Subpart I—General Working Conditions

Subpart I, General Working Conditions, contains provisions that address: dangerous atmospheres; lifesaving equipment such as first aid kits and life rings; hazard communication; sanitation; qualifications of machinery operators and training of supervisors; illumination; and housekeeping. These provisions, as proposed, received widespread support from commenters (Exs. NMSA *et al.*, PMA *et al.*) and are essentially unchanged in the final rule, except as discussed below.

Section 1918.90 ''Hazard communication'' is a cross reference to the Scope and Application section of the final rule. It requires, by reference, compliance with OSHA's general industry hazard communication standard, § 1910.1200. Consistent with the President's Initiative to reduce the size of the Code of Federal Regulations (CFR), OSHA has decided simply to cross-reference the Hazard Communication Standard in the Scope section as one of the part 1910 provisions applicable to longshoring, instead of incorporating that entire standard into this rule. OSHA is using this same incorporation by reference approach in the Marine Terminals Standard (part 1917). This strategy results in a net savings of approximately 50 pages in the CFR.

Final rule § 1918.91 addresses housekeeping requirements, e.g. slippery surfaces, protruding nails, and so on, and remains essentially the same as the proposed section, with one exception. As stated in the proposal, OSHA considers lashing gear used with containers, roll-on/roll-off cargo, and, in particular, automobiles, to be ''equipment,'' and, in the final rule, lashing gear is specifically referred to in paragraph (a). These housekeeping provisions are necessary to maintain a safe work area and reduce accidents to employees handling cargo.

Final rule § 1918.92 provides illumination requirements for cargo handling work aboard vessels and remains the same as the corresponding section of the proposal. These illumination requirements are consistent with those in the current Marine Terminals rule (see § 1917.123). They specify illumination levels in walking, working, and climbing areas; methods of measurement; arrangement of light sources; requirements for portable lights; and prohibition of the use of matches of open flame lights. Both part 1917 and part 1918 require a minimum of five foot-candles (54 lux) of illumination during cargo operations.

Final § 1918.93 requires protection from atmospheric hazards that are not addressed specifically in other sections of part 1918. A list of those sections is included in paragraph (a) for ease of reference. This section establishes requirements for the determination of the hazard, testing for the hazard when ventilation is being applied, and procedures for entry into hazardous atmospheres. In addition, the hazards associated with emergency entry and asbestos spills are also addressed. This section remains essentially the same as the parallel section of the proposal. The types of atmospheric hazards likely to be encountered by shipboard employees are much the same as those found in shoreside operations. Consequently, this section of the final rule contains provisions that are essentially identical to those found in the Marine Terminals Standard (see § 1917.23). This approach will provide consistent requirements that appropriately address both aspects of marine cargo transport operations.

Section 1918.94 of the final rule, ''Ventilation and atmospheric conditions,'' provides ventilation and other requirements for specific atmospheric workplace conditions that are found in longshoring operations, such as excessive concentrations of carbon monoxide (CO), atmospheric contamination by fumigated grains, tobacco, and other fumigated cargoes, and toxic atmospheres generated by menhaden and similar species of fish.

Paragraph (a) addresses the hazards associated with shipboard exposures to carbon monoxide. The buildup of unhealthy levels of carbon monoxide is of particular concern in breakbulk and Ro-Ro vessel operations. In the former, forklifts are used in the hold; in the latter, almost any type of vehicle can be operated either to perform material handling or because the vehicle itself is the cargo (i.e. vehicles being transported on Ro-Ro ships).

Carbon monoxide is a flammable, colorless, practically odorless gas. Most occupational exposures to this ubiquitous substance are the result of the incomplete combustion of organic material (HSDB 1990; Gosselin, Smith, and Hodge 1984, p. III–94).

OSHA's current limits for carbon monoxide in marine terminals and longshoring are 50 ppm as an 8-hour TWA and, in enclosed spaces, a 100 ppm ceiling, i.e. the maximum allowable exposure at any given point in time. The ACGIH has a TLV® -TWA (8-hour) of 25 ppm for carbon monoxide, and NIOSH (1973d/Ex. 1–237) recommends an 8-hour TWA limit of 35 ppm and a 200-ppm ceiling for CO. OSHA proposed to establish permissible exposure limits (PELs) of 35 ppm (8-hour TWA) and 200 ppm (5 min STEL) in outdoor, non-enclosed spaces in the marine cargo handling environment, and to retain the 100 ppm ceiling for CO in enclosed spaces in marine terminals and longshoring operations.

In addition to the 50 ppm TWA in Subpart Z of part 1910, OSHA's Longshoring and Marine Terminals Standards have long had a 100 ppm ceiling for CO in enclosed spaces. OSHA received several comments and considerable testimony concerning the proposed 100 ppm ceiling (Exs. PMA *et al.*, 71, 77, 80). The Pacific Maritime Association also recommended a short-term exposure limit of 200 ppm measured during a five minute period for Ro-Ro and automobile-carrying ships (enclosed spaces). This recommended STEL paralleled OSHA's proposed requirement for a CO limit for outdoor, non-enclosed spaces (SEA Tr. pp. 189–190.)

Mr. Rob Dieda, Safety Director for Stevedoring Services of America's California operations, supported the PMA position and added that:

> Preliminary inquiries indicate that drivers will not exceed the 8-hour time weight average, however, foremen, superintendents and clerks may be overexposed, depending on the ventilation of the ship being worked.
>
> SSA's other jobs rarely last more than one shift, with 6-hour shifts being normal. Most operations utilize unit breaks for approximately 20 minutes, once or twice a shift, depending on the shift length, where all employees exit the vessel.
>
> We average 12 vessels per month, so employees are not exposed daily. (SEA Tr. p. 300.)

Mr. John Fling, Safety Specialist for Red Shield Service Company testified:

> During our testing, the measurements were taken in the breathing zone of the individuals and in the proximity of the foremen and clerks. We received periodically what I call spikes because of their duration. We would get spikes well over 100. I got one spike even over 200.
>
> Now I call these spikes, because * * * of the duration * * * they would quickly go up, peak out, and then immediately start falling off. Things influencing these spikes was [sic] the ventilation on the ship, the type of car being discharged, the number of cars being discharged.
>
> Each time that meter went over 100 parts per million we were technically in violation; we were supposed to evacuate the ship at that point, according to the rule. However, because of the way the level falls off, before we could even start the evacuation, we were back below 100.
>
> The time weighted averages on all of these vessels has never exceeded 50 parts per million over the eight hour period. As a matter of fact, we're still well within the 35 parts per million within an eight hour period.
>
> So our recommendation, from a standpoint of compliance, would be to adopt the 35 parts per million TWA and use the 200 parts per million either as an STEL or even as a ceiling. (SEA Tr. pp. 508–509.)

Mr. Fling also submitted written testimony that included actual carbon monoxide readings from several Ro-Ro vessels that showed a few readings above 200 ppm. It also showed that the reading taken immediately (within one minute) after these high peak readings was below 100 ppm and that subsequent readings well below 100 ppm. Eight-hour exposure levels were all well below 35 ppm (Ex. 72).

The National Institute for Occupational Safety and Health (NIOSH) testified at the hearings in New Orleans on the health effects of carbon monoxide. Mr. Larry Reed, Assistant Director for Policy Development, Division of Standards Development and Technology Transfer, said that, although NIOSH supported a 100 ppm ceiling as being more protective, the NIOSH recommended exposure limit (REL) for carbon monoxide is 35 ppm as an eight-hour time weighted average, with a ceiling limit of 200 ppm. The OSHA panel asked if NIOSH had data on CO's health effects that could support a five-minute short-term exposure limit (STEL) of 100 ppm for carbon monoxide (NO Tr. p. 619). NIOSH replied in post hearing comments that it could not support a five-minute STEL of 100 ppm because such a limit would allow peak concentrations of CO to exceed the ceiling of 200 ppm and that the adverse health effects of exposure at that ceiling have clearly been demonstrated in research. NIOSH reiterated its support for a ceiling of 200 ppm (Ex. 81).

Occupational fatalities and disabling illnesses still appear on the waterfront due to high levels of (CO) accumulating in cargo spaces. In 1980, 11 longshoremen working a vessel in Miami, Florida, were hospitalized after being overcome by carbon monoxide fumes (Ex. 1–76). Another incident involving carbon monoxide occurred in 1985, in Puerto Rico, where 12 longshoremen were overcome while working in the hold of a vessel where a propane-powered fork lift was being used (Ex. 1–77). In another incident in Miami, which occurred in 1988, 2 crewmembers were killed and 14 others hospitalized due to carbon monoxide poisoning that was caused by a gas-powered water pump that was being used to remove water from the hold of a vessel (Ex.1–81).

In 1989, OSHA promulgated a new air contaminant standard for general industry, updating the permissible exposure limits (PELs) found in subpart Z of part 1910. (OSHA later proposed a similar air contaminants standard for maritime and construction employment, but withdrew it after the court decision on the part 1910 PELs.) Included in the list of updated exposure limits in subpart Z were carbon monoxide (CO) and hydrogen sulfide (H_2S). When the general industry standard was vacated and remanded by the U. S. Court of Appeals in the PELs decision (AFL-CIO v. OSHA, 965 F.2d 962 (11th Cir. 1992), the previous PELs continued in effect, and they still apply to general industry and maritime, including longshoring and marine terminals. The current PEL for CO is 50 ppm as an 8-hour time-weighted average (50 ppm TWA), and the ceiling for H_2S is 20 ppm TWA. (On H_2S, see discussion of § 1917.94(f) below.)

In issuing this final rule on cargo-handling operations, OSHA has reviewed the record and has decided to retain the current 50 ppm TWA for CO for both marine terminals and

longshoring, which is consistent with the TWA for general industry in subpart Z of part 1910. The Agency believes that it is unnecessary at this time to lower the TWA below the general industry level because the unique aspects of exposure to CO in marine cargo handling operations are addressed by the ceiling for CO exposure in enclosed spaces, as is discussed more fully below. In future rulemakings, OSHA intends to review many of the PELs in subpart Z and determine whether there is a need to lower them. Any rulemaking action to reduce the TWA for CO or H_2S will address exposures to those substances in all workplaces covered by subpart Z, including longshoring and marine terminal operations.

In addition to continuing the 50 ppm TWA, the record of this rulemaking strongly supports the continued need for a 100 ppm ceiling for CO in enclosed spaces, with the limited exception of a 200 ppm ceiling for Ro/Ro operations. In longshoring and marine terminals, employees regularly enter and work in enclosed spaces. Exposure can rise much more quickly to IDLH levels in enclosed spaces, and escape from these spaces can be difficult. In these sectors, there is thus a higher potential for concentrations to rise to IDLH levels of CO. The 100 ppm ceiling for enclosed spaces in the final rule is intended to serve as a trigger level, to enable employees to exit the enclosed spaces before CO concentrations reach hazardous levels. This is particularly important because of two factors that are closely interrelated: First, employees working in enclosed spaces may need more time to exit those spaces because of their location and configuration aboard a vessel; and second, CO generated into an enclosed space can rapidly accumulate to unsafe levels. Thus, by requiring employees to exit enclosed spaces when the CO level reaches 100 ppm, the standard takes these factors into account to assure that the employees will not be exposed to hazardous concentrations of CO in the spaces.

With regard to the 200 ppm exception, uncontroverted testimony in the record indicated that a 100-ppm ceiling level was not feasible for Ro-Ro operations even though Ro-Ro vessels are designed with extensive ventilation capabilities. As indicated above, these commenters pointed out that, although levels of CO do spike to 100 ppm, they almost immediately fall below this level, with subsequent levels well below. In addition, from an operational standpoint spikes may occur upon starting the vehicles for unloading. Typically, employees are within the vehicles and are in the process of exiting the vessel. If a CO alarm were to go off under these circumstances, it appears unreasonable to require the employees to stop the vehicles and evacuate the vessel on foot, thereby increasing their exposure (See also PMA *et al.*). This type of exposure contrasts sharply with non-Ro-Ro operations, such as working in the hold of a vessel using gasoline powered industrial trucks. Here the CO build up is gradual, does not dissipate rapidly and the evacuation is usually by vertical ladder and more physically demanding. Based on this evidence, OSHA is setting a 200 ppm ceiling limit for occupational exposure during work on those vessels. The Agency notes that although this exception is based on feasibility considerations, it does meet the NIOSH recommendations for a ceiling based on health considerations.

In the near future, OSHA intends to review and revise many of the permissible exposure limits currently in subpart Z of Part 1910, most of which are applicable to both general industry and longshoring employment. If the health evidence supports lower limits for CO than are contained in either the current General Industry Standard or the Longshoring Standard, the Agency will propose the necessary changes for both standards.

Traditionally, in the marine cargo handling industry, carbon monoxide (CO) is the most common hazardous atmosphere that is tested for because of the use of cargo handling equipment that is powered by gasoline, diesel fuel, and propane, in spaces on a vessel that have a tendency to accumulate CO (tween decks, holds, lockers). Testing for carbon monoxide is generally done by a foreman, superintendent, or safety person. Most testing is done using hand-held instruments that give an almost immediate reading of CO in parts per million (ppm). Several persons testified at the hearings in Seattle about current industry practice with regard to carbon monoxide testing. Mr. John Fling, Safety Specialist, Red Shield Service Company, said:

> Jones Oregon Stevedoring Company does a large number of auto ships each year. We use a carbon monoxide dosey [dosimeter] tube to measure the amount of carbon monoxide that the foremen are exposed to. This gives us an average reading for the shift.
>
> To get a better picture of what was happening on a time period, we ran concurrently tests using a digital readout carbon monoxide meter. The meter was calibrated both before and after the tests.
>
> During our testing, the measurements were taken in the breathing zone of the individuals and in the proximity of the foremen and clerks * * * (SEA Tr. pp. 508–509.)

The current OSHA regulation uses the term TWA, time weighted average, and requires that the TWA for CO not exceed 50 ppm averaged over an eight hour period. In marine cargo handling, however, a TWA usually will not accurately reflect an employee's exposure to air contaminants such as CO. Marine cargo handling exposes employees to workplace conditions that can change dramatically from minute to minute. Longshore workers work on many different vessels from day to day. The vessels are often under a foreign flag and not under the control of the employer, and the employee's work locations and weather conditions are always changing. For example, work can take place in a hold, which is an enclosed space, and then change to a frozen cargo locker, which is a confined space, within a short time. Changing weather conditions can cause carbon monoxide either to dissipate quickly (in windy conditions) or settle and build up (during the summer when the air is stagnant). These work conditions contrast sharply with those in manufacturing, for example, where the workplace is in the same location day after day, the employer has control over the physical worksite, and weather is not a factor. For these reasons, the cargo handling industry uses direct reading instruments, which provide immediate feedback on CO levels. The measurements are area rather than personal measurements. When the peak level is reached, workers must be removed from the work area. To ensure that CO levels remain safe over the course of the work shift, the rule requires ''that tests of the carbon monoxide content of the atmosphere are made with such frequency as to ensure that concentrations do not exceed allowable limits.'' Since the requirement for the retention of logs is addressed in subpart Z (Access to employee exposure and medical records, § 1910.1020), the proposed requirement for maintaining the logs under § 1918.94(a)(2) has been deleted from the final rule to avoid duplication (See § 1918.1). In final § 1917.24(a) and § 1918.94(a)(ii), OSHA uses the term ''eight hour average area level.''

The remainder of the paragraph on carbon monoxide addresses the vessel's mechanical ventilation and the use of portable blowers. These requirements are essentially unchanged from the proposal, except that the formula for calculating an eight hour time weighted average has been removed from the final regulation because it is appropriate for

personal monitoring and not for area monitoring (§ 1918.94(a)(1)(i)(B)).

In final § 1918.94(b), OSHA addresses the hazards associated with handling grain treated with fumigants. This section requires, before handling bulk grain in any vessel compartment in which employees are or may be present, that the employer determine whether grain to be loaded or discharged aboard a vessel has been fumigated. If such treatment has been carried out, the employer must determine, by means of tests, that the atmosphere in the compartment is not hazardous to the health or safety of employees. These tests must be conducted by a designated person with the knowledge and experience to measure such atmospheres and prescribe the appropriate protective equipment, if necessary. In many cases, such a person will be a certified industrial hygienist or a Marine Chemist (certified by the National Fire Protection Association). This section also requires that, if the atmosphere in a compartment reaches the level specified as hazardous either by the fumigant manufacturer (as indicated by the Material Safety Data Sheet (MSDS) required by 29 CFR 1910.1200) or by Subpart Z of 29 CFR 1910.1000, all employees must be removed from the compartment and may not re-enter until tests demonstrate that it is safe to do so. The requirements in final § 1918.94(b) remain essentially unchanged from the parallel requirements of the proposal.

Final § 1918.94(c) includes OSHA's requirements for handling cargoes of fumigated tobacco. Tobacco cargoes, both imported and exported, are shipped most typically in bales, in hogsheads, and in intermodal containers. The requirements in § 1918.94(c) apply when cargoes are break-bulk, i.e. are being transported in piece lots of bales or in hogsheads. When such cargoes are containerized, employee exposure is addressed in the Marine Terminals Standard, § 1917.25(g). Comment was received requesting that OSHA clarify whether this section applied exclusively to break-bulk cargo (Ex. NMSA *et al.*). In response to this comment, OSHA has added the word ''break-bulk'' to this provision of the final rule. Paragraph (c) prohibits the employer from loading tobacco until the carrier has provided a written certification stating whether or not the tobacco has been fumigated. This requirement is necessary because tobacco is often fumigated with toxic substances, in which case the cargo must be aerated for a specified number of hours before it is safe to handle.

Final § 1918.94(d) addresses other fumigated cargoes. It requires employers to determine that the concentration of fumigants are below those specified either by the fumigant manufacturer (as indicated by the Material Safety Data Sheet (MSDS) required by § 29 CFR 1910.1200) or by subpart Z of 29 CFR 1910.1000 as hazardous before such cargo was either loaded or discharged. The proposed provision would only have applied to the loading of such cargo. OSHA received the following comment on this provision:

> In recent years the ILWU has been receiving and discharging cargo that has been fumigated in foreign ports (e.g. the discharge of logs from New Zealand and Chile that have been fumigated with methyl bromide). (Ex. 78.)

This commenter requested that the word ''discharge'' be added to § 1918.94(d) to address the fact that some cargo continues to be hazardous even at the time of discharge from the vessel. Testimony provided during the public hearings (NO Tr. p. 381) supported this change. OSHA agrees that the added language will provide additional protection and has accordingly amended the language of this provision in the final rule.

Final paragraph § 1918.94(e) addresses the use of personal protective equipment (PPE) to protect against exposures to concentrations of grain dust. It requires the use of such PPE when employees are exposed to grain dust concentrations that are above those allowed by subpart Z of 29 CFR 1910.1000. This provision is essentially unchanged from that proposed.

Final § 1918.94(f) addresses longshoring operations aboard vessels engaged in the menhaden trade (or trade in similar species of fish). Menhaden is a term that refers to several species of trash fish. Menhaden is used to produce, among other products, fertilizer, pet food and fish oil (See 46 FR 4213.) In the form of cargo handled at specialized menhaden marine terminals, menhaden presents a health hazard to longshore workers because it decomposes, generating hydrogen sulfide (H_2S). As recently as 1987, a hydrogen sulfide incident aboard a menhaden vessel led to serious injury and a fatality (Ex. 1–80). This section of the final rule does not apply to vessels that are using refrigerated holds for the storage of all cargo, because refrigeration prevents the menhaden from decomposing.

This section requires that, before employees enter a hold that contains menhaden, the hold be tested for hydrogen sulfide and oxygen deficiency. These tests must be performed by designated supervisory personnel. The maximum allowable atmospheric concentrations of hydrogen sulfide, as measured by direct reading instruments is a 20 ppm ceiling. The oxygen level must not be less than 19.5%. Unless these atmospheric levels are met, employees are not permitted to enter the hold. The corresponding provisions of the Marine Terminals Standard appear at § 1917.73(a)(2).

OSHA's current limit for hydrogen sulfide in Marine Terminals is a 20 ppm ceiling; this limit applies, along with other provisions, in menhaden tanks (§ 1917.73); the Agency's current Longshoring Standard is silent with regard to both H_2S and menhaden. The General Industry Standard (which applies to marine terminals and longshoring through subpart Z of Part 1910) is a 20 ppm ceiling.

OSHA proposed an 8-hour TWA of 10 ppm in Longshoring and Marine Terminals and a STEL of 15 ppm for menhaden operations. It should be noted that this rulemaking only addresses the appropriate level of H_2S in compartments, holds, and enclosed spaces and does not apply to other circumstances in longshoring operations and marine terminals.

As discussed earlier, OSHA intends to review and revise many of the permissible exposure limits currently in subpart Z of Part 1910, most of which are applicable to both general industry and longshoring employment. As a result, OSHA has decided not to change the permissible exposure limits for H_2S in longshoring or marine terminal operations at this time. The 20 ppm ceiling currently in the part 1910 subpart Z standards will continue to apply; for consistency between shipboard and shoreside cargo handling operations, OSHA is retaining the existing 20 ppm ceiling contained in the Marine Terminals Standard (§ 1917.73(a)(2)) and making it applicable to longshoring as well (§ 1918.94(f)). If the health evidence ultimately supports lower limits for H_2S than are contained in either the current general industry standard or the longshoring standard, the Agency will propose the necessary changes for both standards.

Final § 1918.94(f) requires that atmospheric testing be conducted prior to entry, and during work operations to ensure safe levels of both H_2S and oxygen, that the tests must be conducted by designated personnel, and that employees may not enter a hold unless safe atmospheric levels of both H_2S and oxygen are present.

Final § 1918.95, titled ''Sanitation,'' contains requirements necessary to maintain sanitary conditions. These provisions, for the most part, are consistent with the current regulations for shoreside cargo handling (§ 1917.127). They address washing and toilet facilities, drinking water, eating areas, and garbage and overboard discharges.

OSHA received considerable comment and testimony objecting to the inclusion of tables in the proposal specifying the number of required toilet facilities (Exs. NMSA *et al.*, PMA *et al.*, 6–31a, SEA Tr. p. 107, NO Tr. pp. 160-161, 361–365, 387, 559–562). The Agency does not believe that the tables are necessary, and has decided, instead, to use the more performance-oriented language of the current Marine Terminal Standards. This change also has the added benefit of achieving uniformity between the two aspects of marine cargo handling operations.

Longshoring work is normally done next to a marine terminal. If the marine terminal's sanitation facilities are available for longshore employees, this would constitute compliance with § 1918.95. Section 1917.127, which covers sanitation at marine terminals, is essentially identical to § 1918.95. The remainder of § 1918.95 is essentially unchanged from the corresponding provisions of the proposal.

Final § 1918.96, titled ''Maintenance and repair work in the vicinity of longshoring operations,'' addresses work (such as ship's maintenance and repair) performed while marine cargo handling operations are being done. In such circumstances, employees may be exposed to hazards not found in longshore operations (such as excessive light or heat from hot work or over spray from abrasive blasting or spray painting). In OSHA's current Longshoring Standard, the parallel provisions (§ 1918.95) contain requirements to account for the hazards that can be anticipated when maintenance and repair work are undertaken concurrently with cargo handling. These requirements were proposed as § 1918.95, and only minor changes have been made to improve clarity.

Sections 1918.96(a) through (d) remain the same as proposed. These requirements prohibit the conduct of longshoring operations in situations where the noise associated with maintenance or repair work is such as to interfere with the ability to communicate warnings or instructions (paragraph (a)); prohibit longshoring operations in the hold or on deck if work is being performed overhead that could expose longshore employees to falling objects (paragraph (b)); prohibit longshoring operations in conditions that could expose longshoring employees to damaging light rays, hot metal, or sparks from hot work operations being conducted in the vicinity (paragraph (c)); and prohibit longshoring operations in the immediate vicinity of abrasive blasting or spray painting operations to protect longshore workers from exposure to the hazards associated with these operations (paragraph (d)).

OSHA also proposed in § 1918.96(e) to prohibit cargo handling operations where employees are exposed to electromagnetic (nonionizing) radiation emitted from the radio and radar equipment on the vessel or from radio and television towers that are close to marine cargo handling facilities. OSHA issued a Hazard Information Bulletin on September 5, 1990, concerning a nonionizing radiation incident caused by radio transmitting towers that were near a cargo handling facility. The radio frequency emissions were aimed in the direction of the cargo handling operation and the radiation caused longshore workers touching the crane wires and hooks to be burned. This situation was corrected by having the transmissions directed away from the cargo handling area. Two commenters asked OSHA to delete this paragraph from the final rule, contending that nonionizing radiation has not been a problem in the longshoring industry (Exs. 6-1, 6–16a). Other commenters agreed that this paragraph should be deleted because it is duplicated by regulations found in § 1918.1(b)(7) (Exs. NMSA *et al.*, PMA *et al.*), which incorporates by reference OSHA's General Industry Standard for nonionizing radiation, § 1910.97. In addition, comment and testimony brought to OSHA's attention two articles, one by the United Kingdom's Health and Safety Executive and the other from the Canadian Coast Guard, that specifically addressed nonionizing radiation emitted by vessel radar (Exs. 22 and 77, SEA Tr. pp. 235–236, NO Tr. pp. 660–662). In summary, these studies suggested that nonionizing emissions from vessel radar are not harmful, even in a worst case scenario, where the radar is transmitting and the scanner is stationary at a distance of 19 feet (6 m). If the scanner is transmitting while rotating, the safe distance is 5 feet (1.8 m). OSHA agrees that proposed § 1918.96(e) is somewhat duplicative because of the incorporation by reference of § 1910.97 in the ''Scope'' of this standard. However, the proposed provisions were also not as protective as the General Industry provisions. The proposed provision has therefore not been included in the final rule. Nevertheless, although OSHA believes that nonionizing radiation is not generally a hazard during marine cargo operations, the OSHA Hazard Information Bulletin, discussed above, illustrates that problems can occur. Accordingly, OSHA has added a ''Note'' to § 1918.1(b)(7) that addresses the proximity hazards of vessel radar emissions.

OSHA is adding a new paragraph, § 1918.96(e), to the final rule that addresses machine guarding (including the control of hazardous energy sources -lockout/tagout). It requires guarding of danger zones on machines and equipment used by employees and further stipulates that the power supply to machines be turned off, locked out, and tagged out during repair, adjustment, or servicing work on such machines. This provision is written in performance-oriented language and is similar to § 1917.151. In addition, this provision of the final rule relies on the ''danger zone'' concept used in part 1917 and carried forward in final part 1918 (§ 1918.2). For additional discussion of the danger zone concept, see the ''Other Issues'' and ''Scope and application'' sections of this preamble.

Final § 1918.97 sets out requirements for first aid and lifesaving facilities, and parallels closely the same provisions of OSHA's rule for the shoreside aspect of marine cargo handling (§ 1917.26). Paragraph (a) states that employers must direct their employees to report work-related injuries to the employer, regardless of the severity of the injury. This requirement is essential to ensure that hazards causing injury to employees are identified and controlled. Paragraph (b) requires that a first aid kit be available on or near each vessel being worked and that at least one person trained in first aid be available to provide first aid during cargo handling operations. This requirement is designed to ensure that first aid can be provided quickly if needed. For the benefit of small employers, OSHA is including a non-mandatory Appendix V, which contains a list of the basic elements of a first aid training program that incorporates generally accepted guidelines for, among other aspects of a first aid program, the handling of potentially infectious body fluids (i.e. ''universal precautions''). Providing such compliance assistance materials is consistent with the intent of recently enacted small business legislation (e.g. the Small Business Regulatory Enforcement Fairness Act of 1996).

In final paragraph (c), the requirements for first aid kits are specified. OSHA proposed to require that the contents of the first aid kit(s) be chosen by a physician who, in consultation with the employer, would customize the first aid kit to fit the hazards to be encountered. OSHA received considerable comment suggesting that the requirement that a physician customize the first aid kit was unnecessary and burdensome (Exs. NMSA *et al.*, PMA *et al.*, 6–1, 6–16a, 6–29a, 6–30, 6–31a, 6–36, CH Tr. p.160). After careful consideration of the comments received, OSHA has modified the final rule's approach to the use and selection of first aid kits to recognize that a person who is certified in first aid and familiar with the hazards found in marine cargo handling operations is qualified to select and restock a first aid kit. Accordingly, OSHA has revised § 1918.97(c) so that it reads:

* * * The contents of each kit shall be determined by a person certified in first aid and cognizant of the hazards found in marine cargo handling operations. The contents shall be checked at intervals that allow prompt replacement of expended items.

OSHA believes that allowing first-aid trained individuals rather than requiring physicians to stock the kit will provide employers with greater flexibility while maintaining employee protections unchanged. OSHA notes that small employers may seek guidance from ANSI guidelines on this issue—ANSI Z308.1–1978, ''minimum requirements for industrial unit-type first aid kits''. These guidelines are currently being updated.

Final § 1918.97(d) addresses specific requirements for the strength, design characteristics, and positioning of emergency stretchers (Stokes baskets). Two commenters stated that the provision of Stokes baskets is the responsibility of the vessel and should not be required in part 1918 (Exs. 6–16, 6–31). In response to these commenters, OSHA notes that these provisions have always been a part of the Agency's longshoring requirements and are also a part of the marine terminal requirements. Generally, the Stokes basket(s) is attached to the shoreside crane in a marine terminal. However, since longshoring operations can also take place in the middle of a river or at a facility that is considered a production facility rather than a marine terminal, Stokes baskets are also required in the final Longshoring Standard. Another commenter stated that only trained and qualified personnel should move an injured person (Ex. 6–30). OSHA strongly agrees with that position, but notes that Stokes baskets are specifically designed to lift an injured person securely, vertically if necessary. This may be needed if the injured person has fallen into a narrow space, such as between a column of containers and the hold of a ship. OSHA believes that a Stokes basket is necessary equipment that should be available for trained personnel to use. As with first aid kits and sanitation requirements, if a Stokes basket is available to longshore workers shoreside in accordance with part 1917, this will satisfy the parallel requirement in part 1918. Sections 1917.26 (c) and (d) of OSHA's marine terminal regulations are being revised in the present rulemaking to mirror the final Longshoring Standard's requirements for first aid kits and emergency stretchers.

Final paragraph (e) addresses life-rings and requires that a sufficient number of Coast Guard-approved rings be available to rescue personnel who have fallen into the water. Means of communication are required by paragraph (f) of the final rule to be readily available to obtain emergency and other sources of aid when necessary.

Final § 1918.98 sets out requirements for the qualifications of machinery operators (i.e. crane or winch operators, industrial truck drivers, conveyor operators, etc.) and training requirements for supervisory personnel (i.e. gang supervisors, stevedore superintendents, etc.) in accident prevention. These same provisions can be found in the Marine Terminals Standard (§ 1917.27). Paragraph (a) only permits workers to operate a crane, winch, or other power-operated cargo handling apparatus or any power-operated vehicle or give signals to the operator of any hoisting apparatus if the employer has determined that they are competent, through training or experience; that they know the signs, notices, and operating instructions of the equipment; and that they are familiar with the signal code being used. The only exception to this rule is that employees who are being trained and supervised by a designated person may operate such machinery or give signals to operators during their training.

At paragraph (a)(2), the final rule provides that employees with defective eyesight or hearing that has not been corrected are not permitted to operate certain equipment (i.e., cranes, winches, other power-operated cargo handling apparatus, or power-operated vehicles). In addition, employees suffering medical ailments that may suddenly incapacitate them are not permitted to operate such equipment. This provision includes heart disease and epilepsy as examples of medical ailments that could, in some cases, be suddenly incapacitating. OSHA stresses, however, that nothing in this provision requires employers to exclude from operating machinery all employees who have heart disease or epilepsy or a history of such conditions. Rather, OSHA intends that employees with medical ailments, such as heart disease and epilepsy, should be excluded from operating the specified machine only if their particular medical condition poses a high probability that they could become suddenly incapacitated and only if there is no reasonable accommodation that would eliminate or reduce the risk of direct threat of harm to the employee or others.

For purposes of this standard, OSHA defines ''*suddenly incapacitating*'' medical ailments as those that pose a *direct threat* of *substantial harm* to the health or safety of the employee or others that cannot be eliminated or reduced by some form of *reasonable accommodation*. *Direct threat* refers to those risks that are *significant, specific*, and *imminent* or *current*. In addition, *direct threat* is limited to those situations in which there is a *high probability* that substantial harm might occur. This provision does not apply to medical ailments, including heart disease and epilepsy, that pose a speculative or remote risk of harm. Likewise, this provision is not intended to include medical ailments that pose only a slightly increased risk of harm.

In determining whether there is a direct threat to the health or safety of the employee or others, the employer should identify the *specific* risk posed by the employee as well as the particular *aspect* of the ailment that would pose a direct threat. There are certain factors the employer should consider when determining whether the employee poses the type of direct threat anticipated by this provision:

1. The *duration* of the risk;
2. The *nature* and *severity* of the potential harm;
3. The *likelihood* that the potential harm will occur; and
4. The *imminence* of the potential harm.

The determination of the seriousness and imminence of the potential harm must also be based on the employee's *current* medical condition and the employee's *current ability to perform the job*. The determination is not to be based on mere speculation or predictions of the employee's future medical condition or ability to perform the job at some future date.

Determinations of whether an employee poses a direct threat of substantial harm must be made on a *case-by-case basis*. The determination must be based on the *best available objective data* or other *factual evidence* and/or medical analyses regarding the *particular employee*. The determination must be based upon *reasonable medical judgment* that relies on *current* medical knowledge and not generalized or out-of-date assumptions about the risks that are assumed to be associated with certain disabilities. It is not proper to base determinations on mere speculation, subjective perceptions, irrational fear, patronizing attitudes, or stereotypes. Relevant evidence, for example, may include input from the employee; the employee's experience in previous similar positions; and opinions of physician, rehabilitation counselors, or physical therapists who have expertise in the medical ailment in question and/or direct knowledge of the employee.

Where the employer does determine that the employee's medical ailment poses a significant risk of substantial harm, the employer must also consider whether reasonable accommodations are available that would eliminate or reduce the risk so that it is below the level of direct threat.

OSHA has noted in the standard in both § 1917.27(a)(2) (marine terminals) and § 1918.98(a)(2) (longshoring) that it has defined OSHA suddenly incapacitating medical ailments consistent with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990). Therefore, employers who act in accordance with the employment provisions (Title I) of the ADA (42 U.S.C. 12111–12117), the regulations implementing Title I (29 CFR part 1630), and the Technical Assistance Manual for Title I issued by the Equal Employment Opportunity Commission (Publication number: EEOC—M1A), will be considered as being in compliance with this paragraph.

Paragraph 1918.98(b) addresses supervisory accident prevention proficiency and requires immediate supervisors of cargo handling operations that involve more than 5 persons to complete a course in accident prevention within 2 years after the publication of this standard. Employees who are newly assigned to supervisory duties after that date must receive such training within 90 days of being assigned to those duties. The content of the accident prevention course must be relevant to the particular work operations being supervised by the supervisor. The final rule's criteria for the content of the accident prevention course are performance-based and allow for the instruction to be tailored to the particular operation(s). The recommended topics included as a footnote are considered rudimentary to most shipboard cargo handling operations. Throughout the public hearings, testimony was presented concerning the training done in the marine cargo handling industry and its effectiveness. The supervisory training phase-in periods in the final Longshoring Standard are the same as those in the Marine Terminals Standard (two years after the promulgation of the final rule and after that date 90 days after supervisory assignment. The provisions in § 1918.98(b) received widespread support (NMSA *et al.*).

Section 1918.99 of the final rule is entitled, ''Retention of DOT markings, placards and labels.'' This section concerns the removal of Department of Transportation-required labels and placards on packages, freight containers, rail freight cars, motor vehicles, or transport vehicles of hazardous materials (see 49 CFR parts 171 through 180). Paragraphs (a) and (b) requires employers who receive packages, containers, or vehicles labeled in accordance with these DOT requirements to retain those markings, labels, and placards until the package, container, or vehicle has been cleaned or purged so that it presents no hazard to employees. Paragraph (c) requires employers to maintain markings, placards, and labels in a manner that ensures that they will remain visible, and paragraph (d) states that non-bulk packages that will not be re-shipped will be considered to satisfy these provisions if the label or other acceptable marking is attached to the package as required by OSHA's Hazard Communication Standard (29 CFR 1910.1200). The provisions in this section of the final rule that are required by DOT's Hazardous Materials Regulations, were published by OSHA in the **Federal Register** (59 FR 36700, July 19, 1994). Similar language has been included in the Marine Terminals Standard (see § 1917.29).

The regulatory text of final § 1918.100, ''Emergency action plans,'' which was discussed in the Summary and Explanation for subpart A, is included here. It stipulates that this section applies to all action plans required by a particular OSHA standard, and contains requirements covering the elements of the action plan, alarm systems, the evacuation of employees in emergencies, and the training of persons to assist in evacuation of employees. These requirements parallel those for emergency action plans in OSHA's general industry standards.

Subpart J—Personal Protective Equipment

This subpart is based upon the requirements for personal protective equipment (PPE) found in the shoreside requirements for marine cargo handling (§§ 1917.91 through 1917.95). The hazards addressed by this subpart are those that can cause physical injury to the eyes, respiratory system, head, feet, or other body parts of employees. The subpart also addresses protection from the hazard of drowning associated with working around or above water. The use of the personal protective equipment required in this subpart can reduce or eliminate physical injury to employees caused by exposure to certain maritime workplace hazards. This subpart received widespread support, as evidenced by a number of comments (Exs. NMSA *et al.*, PMA *et al.*).

OSHA has updated references to the American National Standards Institute (ANSI) standards incorporated by reference in this subpart. The ANSI standards for eye protection, head protection and foot protection referenced were the most current editions of those standards available at the time this subpart was published. OSHA believes that the more current editions of the ANSI standards can be adopted by reference in the final rule for both the Marine Terminals Standards and the Longshoring Standard without substantively changing the OSHA regulations.

With this rulemaking, OSHA is consistently applying previous guidelines for determining when employers would be expected to pay for PPE and when employees would be expected to pay.

On October 18, 1994, OSHA issued a memorandum to its field offices which stated as follows:

> OSHA has interpreted its general PPE standard, as well as specific standards, to require employers to provide and to pay for personal protective equipment required by the company for the worker to do his or her job safely and in compliance with OSHA standards. Where equipment is very personal in nature and is usable by workers off the job, the matter of payment may be left to labor-management negotiations. Examples of PPE that would not normally be used away from the worksite include, but are not limited to: welding glasses, wire mesh gloves, respirators, hard hats, specialty glasses and goggles (designed for laser or ultraviolet radiation protection), specialty foot protection (such as metatarsal shoes and linemen's shoes with built in gaffs), face shields and rubber gloves, blankets and cover-ups and hot sticks and other live-line

tools used by power generation workers. Examples of PPE that is personal in nature and often used away from the worksite include non-specialty safety glasses, safety shoes, and cold-weather outer wear of the type worn by construction workers. However, shoes or outer wear subject to contamination by carcinogens or other toxic or hazardous substances which cannot be safely worn off-site must be paid for by the employer. Failure of the employer to pay for PPE that is not personal and not used away from the job is a violation and shall be cited. (Ex. 1–157.)

Although the equipment used in marine cargo handling operations often differs from that mentioned in the October 18 memorandum, the same policy considerations apply in the Longshore and Marine Terminals Standard PPE context. Therefore, OSHA will apply the above-stated policy when determining whether the employer is required to pay for a particular kind of PPE.

In § 1918.101, Eye protection, OSHA maintains the language from the proposal. This section requires that employers provide employees with eye protection that meets the requirements of the American National Standards Institute, ANSI Z–87.1–1989, ''Practice for Occupational and Educational Eye and Face Protection.'' The section also requires that employees use the equipment and that it be cleaned and disinfected before issuance to another employee. In addition, for employees wearing corrective spectacles, paragraph (a)(2) states that the required eye protection equipment must be capable of being worn over the spectacles, unless prescription-ground safety lenses that provide equivalent protection are substituted.

In § 1918.102, Respiratory protection, OSHA incorporates by reference the OSHA General Industry Standard for respiratory protection found in 29 CFR 1910.134 by referencing § 1918.1(b)(12) of the Longshoring Standard. Section 1918.1(b)(12) refers to 29 CFR 1910.134. On November 11, 1994, OSHA published a proposed rule that would revise the respiratory protection rules (59 FR 58884). When this standard is published as a final rule, it will apply, by reference, to both the Marine Terminals and Longshoring Standards (§ 1917.1(a)(2)(x) and § 1918.1(b)(8)).

Final § 1918.103, Head protection, is unchanged from the proposal. This section provides that employers require employees who are exposed to hazards associated with direct head impact or electric shock or burns to the head wear head protection. Such head protection must meet the requirements of the American National Standards Institute, ANSI Z–89.1–1986, ''Personnel Protection-Protective Headwear for Industrial Workers-Requirements.'' The section also requires that employees use the equipment and that it be cleaned and disinfected before issuance to another employee.

Final § 1918.104, foot protection, is also unchanged from the proposal. This section requires that employers provide employees exposed to puncture or impact hazards associated with the foot with safety footwear meeting the requirements of the American National Standards Institute, ANSI Z–41–1991, ''American National Standard for Personal Protection-Protective Footwear.'' The section also requires that employees use the equipment provided.

In final § 1918.105, other protective measures, OSHA is mandating a general approach that requires the employer to provide and ensure the proper use of any additional personal protective equipment that may be necessary to protect other parts of an employee's body. Paragraphs (a)(1) and (a)(2) are unchanged from the proposal. These paragraphs require the employer to provide and require the wearing of any additional special personal protective equipment that may be necessary to protect employees from recognized hazards in the workplace. It also requires that such equipment be cleaned and disinfected before reissuance to other employees.

Paragraph (b) of § 1918.105 addresses the use of personal flotation devices (PFDs). The employer is required to provide for and ensure the wearing of PFDs by all employees whose work may expose them to falls into water. This paragraph received several comments. For example, one witness at the Seattle hearing stated:

> We question paragraph * * * [1918.105(b)(1)], which requires personal flotation equipment to be worn when working on the deck of a barge. Almost all of our barges are outfitted with a safety fence consisting of stanchions and two courses of wire rope; that the vessel is alongside the dock and there is not a chance for a person to fall between the barge and the dock, and have proper means of access through a ladder or a gangway with handrails is provided and there is a safety fence on the barge, this proposed safety regulation appears to be superfluous * * * My concern was * * * that * * * it would be viewed as a rule that if you're working on the deck of a barge, you must wear an PFD regardless of if there is a proper safety fence. (SEA Tr. pp. 622–623.)

Another commenter argued that the current regulation, which requires the wearing of PFD's when working on log booms and barges on the Mississippi River, was sufficient and should be retained (Ex. 6–16a). Other commenters argued that OSHA should modify these requirements by deleting proposed paragraphs (b)(1)(i) through (b)(1)(iv) of § 1918.105, which specified situations where PFDs had to be worn (Exs. 8–8, NMSA, *et al.*). These commenters believed that the performance language of § 1918.105(b)(1) adequately addressed employee safety and allowed flexibility in the means of compliance. OSHA agrees that paragraph (b)(1) adequately addresses safety concerns and has modified the language of the final rule accordingly. OSHA believes that the specification language contained in the proposal would limit worker protection by not including non-specified situations where PFDs are needed.

An area of concern that was not addressed directly in the proposal relates to the wearing of PFDs while working on log rafts. During questioning by OSHA at the Seattle hearing, one witness agreed that PFDs should be specifically required for employees engaged in logging operations (SEA Trans. pp. 447–449). OSHA believes that the wearing of PFDs is essential in logging operations because of the continuous exposure to water when working on rafts, and has added this requirement in § 1918.88, ''Log operations''.

As discussed above, paragraph (b) sets requirements for PFDs. Some of the language in the final rule has been editorially revised to reflect the language used in the U.S. Coast Guard's standard for approved lifesaving equipment (46 CFR part 160). OSHA's existing § 1915.154(a) specifies that the above-cited U.S. Coast Guard requirements for this equipment shall be followed. The OSHA final rule provides clarification on what constitutes an acceptable PFD and uses terminology that is consistent with current U.S. Coast Guard requirements.

Final paragraph (b)(3) addresses the inspection of PFDs for dry rot, chemical damage, or other defects (such as tears, punctures, missing or nonfunctioning components) that affect their strength and buoyancy. Final paragraph (b)(3) also includes the proposed language to the effect that all personal flotation devices must be maintained in a safe and serviceable condition.

Appendices

There are five appendices that follow the regulatory text of this rulemaking. Appendix I, which is non-mandatory, titled ''Cargo Gear Register and Certificates,'' is a sample cargo gear register and certificates that are in the international standard form that complies with ILO Convention number 152, as required by subpart B.

Appendix II, which is mandatory, titled ''Tables for Selected Miscellaneous Auxiliary Gear,'' contains tables that are to be used when manufacturers' specifications or gear certificates are not immediately available at the worksite for determining the Safe Working Load for various synthetic and wire ropes slings, chain slings, and shackles; allowable chain link wear; and the minimum number and spacing of wire rope clips.

Appendix III, which is non-mandatory, titled ''Conventional Cargo Gear,'' provides guidance to employers and employees on how to correctly rig conventional ship's gear (two cargo derricks with married falls).

Appendix IV, which is non-mandatory, titled ''Summary Chart for Testing Special Stevedoring Gear,'' provides all the requirements found in § 1917.50(c)(5) and § 1918.61 for testing special cargo gear and container spreaders in one chart.

Appendix V, which is non-mandatory, titled ''Basic Elements of a First Aid Training Program,'' outlines the basic elements of a first aid program, including universal precautions to prevent the spread of bloodborne diseases.

V. Other Issues

1. OSHA raised as an issue the possible harmful effects of diesel exhaust on marine cargo handling employees, especially those employees who work Ro-Ro vessels where exposure to such exhaust is probably the greatest. In response to questions raised during the hearings, NIOSH provided the following data in a post hearing submission:

> Recent animal studies in rats and mice confirm an association between the induction of cancer and exposure to whole diesel exhaust. The lung is the primary site identified with carcinogenic or tumorigenic responses following inhalation exposures. Limited epidemiologic evidence suggests an association between occupational exposure to diesel engine emissions and lung cancer. The consistency of these toxicologic and epidemiologic findings suggests that a potential occupational carcinogenic hazard exists in human exposure to diesel exhaust. (Ex. 81.)

Although studies have been conducted concerning the effects of diesel exhaust by the Mine Safety and Health Administration (MSHA) in the mining industry, no specific studies relating to the longshoring industry had been completed when OSHA published this final rule. Diesel exhaust particulates, which have been identified by OSHA as a priority for further study by the Priority Planning Process, may be the subject of a future rulemaking, during which OSHA anticipates the availability of more conclusive scientific data. Consequently, OSHA has decided to defer any regulatory action on this issue in this rulemaking.

2. Prior to the proposal, OSHA learned of accidents reported in West Coast ports that were associated with picking up the chassis and fifth wheel [9] along with the container (due to the failure of the container and chassis to separate during a loading operation). However, OSHA did not have information regarding: (1) the frequency of occurrence of such accidents, (2) the availability, effectiveness, and feasibility of devices which would shut the crane down once the device detects the fifth wheel being raised off the ground, and (3) the existence of other ways to eliminate the problem (such as better ''monitoring'' of the chassis twist locks under the hook through training and work practices, or requiring the driver to get out of the cab until the container is lifted clear of the chassis). Due to this lack of information, OSHA raised this issue in the proposal.

In response, OSHA received one comment from a manufacturer of safety devices that prevent the inadvertent lifting of the fifth wheel with the container. These devices shut down the container gantry crane when they detect the uneven balance to the load that occurs when a fifth wheel is lifted. The experience of this commenter suggests that administrative work practices are not fully effective (Ex. 6–3).

This issue received very little attention during the hearings and public comment period. However, OSHA believes that the wider use of SATLs will help to prevent accidents caused by the inadvertent lifting of the chassis and container together. When SATLs are being used, as explained earlier, the longshore workers remain on the quay to place the SATLs on the bottom of the container after it is lifted only a foot or two off the chassis. In contrast, when manual twist locks are in use, they are inserted on the ship; lifts of the container from the chassis in this situation are usually much quicker and much higher, since the crane operator does not have to stop after a foot or two to allow the SATLs to be inserted. Although a lift of this magnitude is enough to allow the fifth wheel to disengage and depart, the lift would not be a substantial lift of twenty to fifty feet, but a limited lift of only a few feet. With a two foot lift, even if the chassis does not disengage from the container, the injury potential would be greatly reduced. Because this rulemaking will increase the use of SATLs in this industry, OSHA has decided not to take any further regulatory action on the fifth wheel hoisting issue at this time. It is OSHA's intention to monitor the frequency of this operation further and engage in joint studies with the assistance of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) to assess the need to address such accidents in the future.

3. Specific questions were raised in the proposal to elicit information OSHA believed would be helpful in determining appropriate elements for comprehensive occupational safety and health (COSH) programs in the marine cargo handling industry. Although this is an industry that, historically, has been in the forefront in the development of safety and health programs (particularly safety training programs), several commenters argued that OSHA should not promulgate rules governing COSH programs (Ex. NMSA *et al.*). The employee participation element of such programs was also discussed at length at the Seattle hearing (SEA Tr. pp. 435–436). Several responders (Exs. 6–5, 6–20, 6–23, and 6–25) opted not to comment at this time but stated that they would reserve comment until a future rulemaking specifically on this subject. OSHA will continue to review all available information in determining the need for and contents of the proposed requirements for safety and health programs in this industry.

4. In the proposal, OSHA sought information on hazards related to the increased usage of newly developed Flexible Intermediate Bulk Containers (FIBC's) used to handle bulk chemicals. Although several commenters (Ex. NMSA et al.) acknowledged the increased use of FIBCs, their experience with this type of container did not uncover any unique hazards that had not already been addressed in the Longshoring Standard. In addition, Mr. Signorino of Universal Maritime Service Corporation, pointed out that the Department of Transportation, Research and Special Programs Administration (RSPA) already has regulations (59 FR 38040) that address the safe transport of hazardous materials in such containers (Ex. 6–35). OSHA has thus concluded that the Agency does not need to pursue regulatory action at this time.

5. OSHA issued a standard for the control of hazardous energy sources (lockout/tagout) that applies to general

[9] A fifth wheel is a unique power unit designed primarily for moving and spotting trailers in truck, rail, and marine terminals. Other names for a fifth wheel are: yard hustler; jockey truck; yard goat; and UTR (utility tractor). Most fifth wheels are not designed or equipped for public highway or street use.

industry employment (29 CFR 1910.147 (54 FR 36645)). This standard addresses practices and procedures that are necessary to disable machinery or equipment and to prevent the release of potentially hazardous energy while maintenance and servicing activities are being done. The standard requires that lockout be used for equipment designed with a lockout capacity, and allows tags to be used to ''tag out'' equipment that was not designed to be locked out. Marine terminal activities involve work operations (e.g. container repair shops and warehouses) where lockout/tagout hazards are present and are similar in nature to those posed by General Industry repair shop and warehouse operations. Many commenters (Exs. 6–35, 6–16c) contended that the current Marine Terminals Standard contains requirements (most broadly applied in § 1917.151(b)(7)) for lockout/tagout that are more protective than those in the General Industry Standard, and that these requirements should be applied to longshoring operations.

For the most part, repairs to shipboard equipment are normally accomplished by the crew of the vessel and are only infrequently performed by longshore workers. However, to provide protection in those instances where longshore workers may do repairs that would require the locking out of equipment, and to assure regulatory consistency with marine cargo handling operations, OSHA is including the same lockout/tagout provisions of § 1917.151(b)(7) in the Longshoring Standards (codified at § 1918.96(e)).

6. As indicated earlier, OSHA contracted with a safety expert, A.J. Scardino, to conduct a study of the fall hazards associated with the cargo handling of intermodal containers. In his study, he recommended:

> * * * that the location of the fixed anchorage point in relation to the working surface shall be located ''above'' the head of the employee. Every effort should be made to assure that the attachment point for the system is located no lower than the vertical height position of the harness ''D'' ring. According to ''Humanscale 7a'', for the 50th percentile male, this would be 1.4 meters (55.4 inches). (Ex. 1–139.)

He further recommended that:

> The use of systems that are at foot level, thereby creating a tripping hazard, should be discouraged. If these systems are to be used, then, the components that make up the system should be of a high visibility color. (Ex. 1–139.)

The final container top fall protection provisions are crafted in performance-oriented language to promote innovation and flexibility in providing fall protection. The key performance tests that a fall protection system must meet are that it (1) be rigged to reduce free-fall distance so that the employee will not contact any lower level stowage or vessel structure; and (2) be designed so that the fall will not produce an arresting force on an employee that exceeds 1800 pounds (8kN) (See § 1918.85(k) (3) and (4)).

Although elevated anchorage points are important considerations in the design of fall protection systems, these provisions of the final rule focus on the performance criteria for such systems rather than their specific design aspects. Consequently, OSHA has determined that it would not be appropriate to include this single design consideration in the final rule.

VI. Summary of the Final Economic Analysis and Regulatory Flexibility Analysis

As required by Executive Order 12866, OSHA has prepared an economic analysis of the final standards for longshoring and marine terminals. Neither standard is a ''significant'' rule under that Executive Order nor a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act. In addition, as required by the Regulatory Flexibility Act of 1980 (as amended in 1996), the Agency has assessed the potential impacts of these two marine cargo-handling rules on small entities and has determined that they will not have a significant economic impact on a substantial number of small entities. Because this standard does not impose annual costs of $100 million or more, will not significantly affect small governments, and is not a significant federal intergovernmental mandate, the Agency has no obligations to conduct analyses of these rules under the Unfunded Mandates Reform Act.

This section of the Preamble presents a summary of the Economic Analysis and the screening analysis for small-business impacts. The entire analysis has been placed in the rulemaking docket for the two final standards.

The purpose of this Final Economic Analysis is to:

- Describe the need for a revision of the existing standards for longshoring and marine terminals;
- Identify the establishments, industries, and employees potentially affected by the standard;
- Estimate the costs, benefits, economic impacts and small business impacts of the standard on affected firms;
- Assess the technological and economic feasibility of the standard for affected establishments, industries, and small businesses;
- Evaluate potential non-regulatory approaches to control the pertinent risks to workers in the affected industries; and
- Describe alternatives adopted in the final standard that are designed to reduce the impact of the standard on small firms while meeting the objectives of the OH Act

These standards affect employers and employees in many industries. The Marine Cargo Handling industry, classified as SIC 4491 in the Standard Industrial Classification Manual, is the industry most directly affected. SIC 4491 is composed of both stevedores and marine terminal operators, both businesses that are exclusively engaged in marine cargo handling. Marine cargo handling activities in other industries are also impacted: for example, manufacturers who load or unload raw materials or finished products from vessels and electric utilities than unload coal from barges also fall within the scope of the revised final standards.

A. Evaluation of Risks and Estimation of Benefits

The transport of marine cargo has changed significantly since OSHA's Longshoring Standard was adopted in the early 1970s and even since the Marine Terminals Standard was revised in the early 1980s. Low-cost transport of cargo by standardized intermodal containers (referred to simply as containers hereafter) has become the dominant mode of shipping manufactured goods. To transport vehicles, specialized ''roll on/roll off'' vessels have been developed. Freighters have therefore been designed with efficient container transfer and ease of intermodal movement as the dominant criteria. Shipment by intermodal container has replaced shipment of ''break bulk'' cargo which came in many sizes and modes. As a result, cargo handling has become a more capital intensive and mechanized industry in the past 20 years. For example, although the weight of transported cargo (U.S. exports and imports) has remained roughly constant between 1980 and 1990, the amount shipped via intermodal containers has more than doubled. Over the same period, employment in SIC 4491 has declined from about 88,000 to 55,000.

The change in the technology of cargo transport has altered the risks that employees face on the docks and aboard ships. Although mechanization has reduced injuries due to overexertion and lifting, new risks have arisen, such as falls from containers stacked as high

as 60 feet and being struck by forklifts or ''fifth wheeler'' tractor trailers moving containers.

Because the final standard requires longshore employers to load and unload containers secured to each other with positive container securing devices, e.g., semi-automatic twist locks, where feasible, the shipping industry is also potentially affected, since ship owners must purchase these container connectors. The standards' effect on the U.S. shipping industry and international trade (and foreign shippers) is discussed below.

The Bureau of Labor Statistics 1992 injury rate for SIC 449 (Service Incidental to Water Transportation) was 14.0 for every 100 FTE workers, based on a 2000 hour work-year, compared with 8.9 for all of private industry (''Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1992,'' published May 1995). The lost workday and non-lost workday injury rates per 100 FTE workers in SIC 449 were each 7.0. The median number of lost workdays due to injury in SIC 449 was 15 per case as compared to 6 for all of the manufacturing sector. For SIC 4491, the average number of lost workdays was 38.9 lost workdays per lost workday injury. These statistics clearly indicate that marine cargo handling continues to be a highly hazardous industry.

An estimated 7,593 injuries and 18 fatalities occur annually during all marine cargo handling activities. The final Longshoring and Marine Terminals Standards are expected to result in the prevention of 1,262 injuries and 3 fatalities, annually. Many additional fatalities and injuries would be prevented if employers were in full compliance with requirements that have been in place in the Agency's Longshoring and Marine Terminals standards for years and that have been retained in these final standards. In particular, the Agency believes that an additional one to three fatalities may be avoided each year when all affected establishments comply with OSHA's requirements for engineering controls and fall protection on intermodal containers. However, because the Agency's existing Longshoring standard has been interpreted as requiring fall protection at heights over eight feet (see Preamble of the proposed rule, 59 FR 28611, June 2, 1994), the Agency did not claim the benefits or estimate the costs potentially associated with the final rules' clarified requirements for fall protection on containers in this final economic analysis. In the affected industries, confusion over OSHA's existing container top fall protection requirements and their interpretation and non-uniform enforcement have resulted in currently low compliance levels for fall protection on containers.

The deaths and injuries estimated to be prevented by this revised standard are in addition to those that would be prevented by full compliance with OSHA's existing marine-cargo handling rules. OSHA estimates that, of the injuries potentially averted by the revised standards under the revised rules, about 800 are lost workday cases. Since a lost workday injury results in almost 40 missed days of work, on average, in SIC 4491, the 800 lost workday cases amount to a savings of more than 30,000 lost workdays annually. The potential economic savings of these avoided injuries alone is approximately $7 million annually. Thus the final standards for Longshoring and Marine Terminals are clearly needed to reduce the continuing significant risk of falls and other hazards posed to marine cargo handling workers employed in these industries.

B. Affected Industries, Establishments, and Employees

The requirements of the final standards apply to all establishments that perform marine cargo handling. Affected industries include the marine cargo handling industry itself (classified in the 1987 Standard Industrial Classification manual as SIC 4491), which includes both marine terminal operators and stevedores, as well as any other industries and establishments that handle marine cargoes, such as electric utilities that unload coal from barges or grain elevators that load grain onto barges. The Agency estimates that there are 3,700 establishments affected by both the Longshoring Standard and the Marine Terminals Standard. Table 1 shows how these establishments are distributed across affected industries for both standards. Based on employment data from the Table 1 Bureau of the Census and OSHA inspection data, 93,427 workers are estimated to be affected by the Longshoring and Marine Terminals standards, about 73,000 of whom are employed in establishments classified in SIC 4491.

TABLE 1.—NUMBER OF ESTABLISHMENTS AFFECTED BY THE FINAL LONGSHORING AND MARINE TERMINALS STANDARDS, BY INDUSTRY

Industry	Number of establishments
SIC 4491—Marine Cargo Handling	746
Manufacturing	1,660
Transportation, Communications, and Electric, Gas and Sanitary Services	662
Wholesale Trade	273
Other SICs [1]	359
Total	3,700

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Centaur [I, Chapter 2].

[1] Other SICs include SIC 13 (Oil and Gas Extraction), SIC 15 (Building Construction sectors under SIC 44 (Water Transportation) other than SIC 4491.

C. The Final Standards and Their Estimated Costs

The Preliminary Regulatory Impact Analysis identified 21 provisions of the proposed rules that were likely to generate costs of compliance for employers. In response to comments and public testimony by stakeholders during the rulemaking, the Agency revised several provisions in the final standards that will affect estimated costs. Better information acquired from the industry during the rulemaking has also resulted in revisions of the costs estimated for particular provisions.

The most significant change to the final rule since the proposed standard for longshoring was issued has been made in the requirement for fall protection when working on top of any intermodal container. The proposed standard would have required fall protection when the fall height was 10 feet or more (containers are usually less than 10 feet tall); the final rule, however, requires such protection when a fall hazard exists at a height of 8 feet. Because the Agency has required fall protection for workers on containers for years (see paragraph 1918.32(b) of the existing Longshoring Standard) this provision of the final rule does not impose new costs on the regulated community.

Changes to three provisions that were proposed have resulted in the elimination of the costs that were projected to be associated with these provisions. In the final standard, the Agency has substituted performance language for the specification language proposed for the selection and maintenance of first aid kits and for the provision of the proper number of

sanitary facilities. Comments in the record indicated that the industry was currently providing adequate facilities in these two areas, and thus that detailed specifications were not necessary. The final standard also does not require that fall protection systems be certified by a registered professional engineer; employers may rely on the guarantee/certification generally provided by manufacturers of this personal protective equipment instead. These three provisions in the final standard are estimated to impose no new costs for employers, and the Agency believes that the changes made to the final rule have not reduced employee protections.

The proposal would have permitted containers to be lifted only by a purely vertical lift from at least four top fittings. In the final standard, non-vertical lifts are allowed as long as the lift angle is at least 80 degrees and other protective conditions are met. This change will allow employers with non-gantry container cranes to avoid the purchase of box spreader beams and maintain greater productivity with the simpler spreader bars generally in use. Again, OSHA believes, and the record supports, that this change will not diminish employee protection.

In the final standard, regulations for special stevedoring gear remain similar to those in the proposal. The Agency has revised its estimate of the cost imposed on the regulated community to test gear every four years, based on comments in the record.

Anti-two-blocking devices are required by the final rule on all cranes used to lift personnel. This provision is unchanged from the proposal; however, the Agency inadvertently overlooked the costs potentially associated with this provision at the time of the proposal. Lifting personnel by cranes other than container-handling gantry cranes is reported to be infrequent in the cargo handling industry, and the impact of these provisions is likely to be felt only by employers in the South Florida and Gulf areas. The cost estimate for anti-two-blocking devices is included in Table 2 below, which provides the estimated annual cost of provisions in the proposed and final standard.

TABLE 2.—ESTIMATED ANNUAL COSTS OF FINAL LONGSHORING STANDARD, BY PROVISION (1993 DOLLARS)

Source	Annualized costs* projected by the preliminary regulatory analysis	Annualized costs* estimated by the final economic analysis ($)
Workplace Analysis	68,959	183,890
General Training:		
Supervisor Time	67,370	67,370
Instruction	95,779	95,779
Subpart C:		
6'' sideboards: dockboards/ramps	151,940	139,955
2–3/4 inch sideboards (final stnd)		
Subpart G:		
4-yr. testing of special gear	37,583	704,300
Lockout/tagout: powered conveyors	2,684	2,684
Anti-two blocks	0	21,300
Subpart H:		
Vertical lifts	156,412	11,360
Certification: fall protection	95,565	0
Secondary safety cage attachments	2,249	2,249
Marking RO-RO ramps	1,911	1,911
Marking flat bed/low boy trailers	2,811	2,811
High visibility vests	266,260	1,275,799
Separation of vehicles/pedestrians on RO-RO ramps	87,801	87,801
Logging: rescue boats	0	3,550
Training:		
Supervisor Time	14,768	14,768
Instructor	3,815	3,815
Rescue boats	0	3,557
Subpart I:		
Sanitation	1,560	0
First aid kits	646,143	0
Accident prevention training	107,710	107,710
Stretchers	52,240	52,540
Subpart J:		
Personal flotation devices	151,405	151,405
Total	$2,014,965	$2,934,554

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur [1.Chapter 4].
*Annualized over 10 years using a 7% interest rate.

In logging operations, powered rescue boats are required by the final standard when the situation warrants it. The proposed standard only required that rescue boats be ''immediately available'' rather than capable of ''immediate rescue.'' This provision of the final rule will therefore impose higher costs on the regulated community than the simpler provision proposed, and the Final Economic Analysis takes account of this new cost.

The Agency has revised its cost estimates for some provisions since the PRIA. Based on comments received from stakeholders on the estimated costs of providing high-visibility vests for employees engaged in container and roll

on/roll off operations, the Agency has substantially revised the costs estimated for this provision. In addition, the Agency has increased its estimate of the amount of time necessary for establishments to analyze and adjust to the impact of the new standards on their workplaces. Finally, the proposed standard would have required six-inch sideboards for bridge plates and ramps; in the final standard, sideboards must be at least 2¾ inches when the distance spanned is 3 feet or greater. Because the final provision is consistent with current industry practice, the Agency has revised the estimated costs for this provision downward.

The final Longshoring Standard is estimated to impose costs on employers of $2.9 million annually, in 1993 dollars, to comply with all of the final rule's provisions, and the Marine Terminals Standard is estimated to cost about $0.2 million annually. Table 2 provides a comparison of the estimated costs of the proposed and the final Longshoring Standard. The estimated costs to marine terminals, which are little changed since the proposal, are presented in Table 3. The total costs of the final standards are estimated at about $3.1 million annually. Nearly all of these costs are due to the Longshoring standard and are associated with compliance efforts by establishments in SIC 4491, which includes marine terminal operators and stevedores.

TABLE 3.—ESTIMATED ANNUAL COSTS OF FINAL MARINE TERMINALS STANDARD (1993 DOLLARS)

	Annualized cost*
Workplace Analysis	91,945
General Training:	
Supervisor Time	25,288
Instructor	23,955
Seatbelts	17,537
Total	$158,725

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur Report to ORA, Reference 1 in Economic Analysis, Chapter 4.

*Annualized over 10 years using a 7% interest rate.

D. Technological Feasibility, Economic Impacts, and Economic Feasibility

All of the requirements of the final standards can be met using currently available equipment, facilities, tests, inspections, supplies, and work practices. OSHA's analysis of the technological requirements of each provision indicates that none of the final provisions will create any problem of supply or availability of equipment, facilities, or personnel. Thus the Agency concludes that the standards are technologically feasible for employers in these industries.

In the rulemaking, questions were raised about the technological feasibility of providing fall protection on top of intermodal containers.[10] However, the final standard exempts employers from providing fall protection when it is impossible to do so or when doing so would create a greater hazard. Some commenters questioned whether it was technologically feasible to install anti-two-blocking devices on shore-based cranes. However, industry experts testified that it was possible to do so and further that, when cranes are not lifting personnel, the anti-two-blocking device can be turned off or by-passed for duty cycle work. For one type of shore-based crane, those with two hoist blocks, the addition of anti-two-blocking devices were said to make the crane more difficult to operate. The Agency has concluded that the anti-two-blocking devices can be turned off when these cranes are doing duty-cycle work (the devices must only work when hoisting personnel). In any event, there are alternative means for personnel to reach elevated work areas. Other commenters noted that when positioning containers in some vessels, it was not possible to perform absolutely vertical lifts in some situations. The Agency agreed with this view, and the final rule allows non-vertical lifts of containers under certain circumstances.

The total annual revenues and profits of longshoring operations are estimated to be approximately $7.8 billion and $388.9 million, respectively. The estimated costs of compliance with the final Longshoring and Marine Terminals Standards are $3.1 million annually. Since these costs will mainly be generated by compliance efforts by stevedores and marine terminal operators, and since the compliance costs of marine terminals will be passed on to stevedores, the Agency has concluded that the best measure of the standards' economic impact is to compare costs of compliance with the revenues and profits of longshoring operations. Thus, the annual costs of compliance with the final rule represent less than 0.04 percent of the revenues and 0.8 percent of the profits of establishments in the longshoring industry. Costs of this magnitude are unlikely to threaten the viability even of marginal firms.

Current practices in the marine cargo handling industry (SIC 4491) indicate that the requirements of the final standards can be met without significant hardship. Many employers already comply with the final rule's requirements, as the record indicates.

Compliance with the requirements of the final Longshoring and Marine Terminals Standards is not expected to produce any significant adverse economic impacts. The costs of these rules are expected to impose only a minimal burden on affected establishments and will be more than offset by the economic benefits of avoided deaths and injuries. Taken alone, the estimated compliance costs would represent an average increase in the cost of shipping a loaded container in or out of U.S. ports of less than 50 cents; the current cost of shipping such a container from the U.S. to Europe now averages about $3000 (about $150 for stevedoring services). On the whole, the costs of marine cargo handling operations for society would decrease as a result of the final rules, because fewer accidents mean less lost time and wages and fewer medical and legal resources spent on cargo shipping and handling. The estimated benefits anticipated from the final standards include unquantified reductions in pain and suffering, plus estimated economic savings of more than $7 million annually from reducing lost workdays due to injuries. The Agency therefore has determined that the final Longshoring and Marine Terminal Standards are economically feasible for establishments in the affected industries.

E. Screening Analysis to Identify Small-Business Impacts and Certification of No Significant Impact

Pursuant to the Regulatory Flexibility Act of 1980, as amended in 1996, OSHA has assessed the impact of the revised standards on small entities in the marine cargo handling industry, using the Small Business Administration (SBA) size standard for SIC 4491. SBA has defined a small business in SIC 4491 as one with annual revenues of $18.5 million or less (61 FR 3291). OSHA estimates that this corresponds to 90% of all establishments in SIC 4491. As noted earlier, the costs of compliance amount to less than 0.04 percent of sales in the marine cargo handling industry. Because the magnitude of these compliance costs is so small, and because the final rules reflect practices that are currently being followed by many employers throughout the marine cargo handling industry, the Agency certifies that these final rules will not have a significant impact on a substantial number of small entities.

[10] For an analysis of comments received and Agency responses, see the Summary and Explanation, above.

Several provisions in the final standards have been written or revised in order to avoid imposing unnecessary burden on small businesses while still remaining consistent with OSHA's mandate to protect employee safety. For example, when establishments do not have container gantry cranes, as is the case for many smaller establishments that service freighters with mixed cargoes, the final Longshoring standard does not require the use of positive container securing devices, although doing so was considered by the Agency. In addition, establishments that use shore-based, single wire cranes for handling containers are allowed under the final rule to lift containers with non-vertical lifts, provided that they conform to other handling conditions designed to protect marine cargo handling employees. These firms also will not have to purchase box spreader beams and can continue to use their simpler spreader beams, a change to the standard that will enhance container top safety as well as productivity. In addition, in the final standard all existing special stevedoring gear with a capacity greater than 5 short tons will only have to be tested every four years and an employer's designated person will be allowed to perform the testing (rather than an OSHA accredited agency). Finally, employers will not be required by the final rules to have a professional engineer certify the adequacy of fall protection systems but can instead rely on a qualified person. All of the above provisions provide regulatory relief to smaller as well as larger employers, and all are consistent with the mandate of the OSH Act.

F. Non-Regulatory Alternatives

The Agency considered relying on the incentives created by workers' compensation programs and the threat of private tort suits to reduce the number of fatalities and injuries to workers in the affected industries. The Agency determined, however, that government regulation is needed because of the significant risk of job-related injury or death that continues to exist in these industries. Private markets fail to provide sufficient safety and health resources due to the externalization of part of the social cost of worker injuries and deaths. The longshore workers' compensation system does not offer an adequate remedy because premiums to employers do not reflect specific workplace risk, and liability claims are restricted by statutes that prevent employees from suing their employers. The Agency is also aware that in some cases union and employer agreements include many of the provisions that are contained in the final standards. However, a large fraction of the affected employees are not subject to these agreements. Further, these agreements are neither consistent nor comprehensive, and they do not provide an enforceable framework for workplace safety. Accordingly, bargaining between employers and employees cannot be relied on to achieve an adequately protective solution.

G. Impact Upon International Trade

OSHA has determined that compliance with the final Longshoring and Marine Terminals Standards will not have a significant impact upon international trade. The compliance costs of the standards are minimal and are not expected to affect prices of exports or imports or international competitiveness. To the extent that compliance with the final rules increases cargo handling efficiency and reduces the number of injuries and fatalities associated with these operations, shipping costs may be reduced and international trade encouraged.

The requirement for engineering controls where feasible for ships to load or discharge containers (e.g. semi-automatic twist locks or cell guides) will not affect shippers' costs or, therefore, international trade. Wherever possible most shippers have already converted to the use of these engineering controls since there are clear cost advantages to doing so. Approximately 75 percent of foreign-owned vessels that call at U.S. ports use these engineering controls already. Not all ships will convert to using these engineering controls since these are only required where container lifting is done with container gantry cranes and some marine terminals and longshoring work is still performed with single-wire cranes or forklifts.

VII. Environmental Impact

The final Longshoring and Marine Terminals Standards have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL NEPA Procedures (29 CFR Part 11). No significant negative impact is foreseen on air, water or soil quality, plant or animal life, the use of land or sea, or other aspects of the environment as a result of these standards.

VIII. Recordkeeping and Paperwork Requirements

The Agency has estimated the paperwork burden of the Longshoring and Marine Terminal Standards under the guidelines of the Paperwork Reduction Act of 1995. Under that Act, burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. The Agency has concluded that the following elements of these two standards potentially could create a paperwork burden for the affected industries:

1917.25(g) warranty of fumigated tobacco
1917.26(d)(7) labelling of stretcher closets
1917.50(i)(2) labelling of cargo handling gear
1917.71(f)(4) marking of trailers 1918.22(g) labelling gangway hazards 1918.74(i)(1) tagging ladders 1918.61(b)(2) labelling gear
1918.86(g) labelling trailers

Collections of Information: Request for Comments

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. Therefore, OSHA is soliciting comments concerning the proposed approval for the paperwork requirements of the final Longshoring and Marine Terminal Standards. Written comments should:

- 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 clarity 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.

OSHA must obtain Office of Management and Budget (OMB) approval of the paperwork requirements of this final rule. As part of that approval process OSHA will be submitting a Paperwork Reduction Act Submission (OMB 83–1) along with a supporting statement responding to specific questions from OMB. After a review of OSHA's submission, OMB will either approve, reject, or request revision of the identified paperwork requirements. A full copy of OSHA's submission to OMB is included in the docket for this rulemaking and is available in the docket for public inspection and copying. The public is asked to review and offer comments on OSHA's paperwork package. Comments may be submitted to the rulemaking docket, S–025. The following information is provided as a summary of the information contained in OSHA's submission to OMB:

Type of review: Revision of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Longshoring and Marine Terminals.

OMB Control No.: 1218–0196.

Agency Docket No.: S–025.

Frequency: On occasion.*Affected Public:* Business or other for profit, Federal government, State and local governments.

Number of respondents: 3,700.

Estimated time per respondent: Varies.

Total estimated annual recurring costs: $12,750.00.

Total estimated first year, one-time costs: $1,573,350.00.

Total estimated annual recurring burden hours: 250 hours annually.

Total estimated first year, one-time burden hours: 30,850 hours.

Comments submitted in response to this request will be summarized and included in OSHA's request for Office of Management and Budget approval of the paperwork burden. The comments will also become a matter of public record.

IX. State Plan Requirements

This **Federal Register** document issues new rules addressing longshoring and marine terminal operations regulated in 29 CFR parts 1910, 1917, and 1918. The new rules promulgated today will be codified into the applicable section of the Code of Federal Regulations.

The 25 States or U.S. Territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, e.g. because an existing state standard covering this area is already ''at least as effective as'' the new Federal standard.

Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage of maritime activities in Federal OSHA states and in the following State Plan states: Alaska, Arizona, Connecticut (plan covers only state and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York (plan covers only state and local government employees), North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming.

X. Federalism

This standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such State Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (See section 18(c)(2)).

The final Longshoring and Marine Terminals Standards are drafted so that employees in every State will be protected by general, performance-oriented standards, except in those cases in which employee safety would be enhanced by more specific requirements. States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular state. Moreover, the performance nature of this standard, of and by itself, allows for flexibility by States and employers to provide as much leeway as possible using alternative means of compliance.

These final Longshoring and Marine Terminals Standards address safety and health problems related to the hazards found in the marine cargo handling industry which is national in scope.

Those States which have elected to participate under section 18 of the OSH Act would not be preempted by this regulation and will be able to deal with special, local conditions within the framework provided by this standard while ensuring that their standards are at least as effective as the Federal Standard.

XI. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more that $100 million.

List of Subjects in 29 CFR Parts 1910, 1917, and 1918

Cargo, Cargo gear certification, Intermodal container, Hazardous materials, Incorporation by reference, Longshoring, Maritime, Marine cargo handling, Marine terminal, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

Authority: This document has been prepared under the direction of Greg R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. Pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 6–96 (62 FR 111); and 29 CFR part 1911, parts 1910, 1917 and 1918 of Title 29 of the Code of Federal Regulations are amended as set forth below.

Signed at Washington, D.C. this 18th day of July, 1997.

Greg R. Watchman,

Acting Assistant Secretary of Labor.

Alexis M. Herman,

Secretary of Labor.

PART 1910—GENERAL INDUSTRY SAFETY AND HEALTH REGULATIONS [AMENDED]

1. The authority citation for subpart B of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 *et seq.*; Service Contract Act of 1965, 41 U.S.C. 351 *et seq.*; Sec.107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 *et seq.*; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 1911), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6-96 (62 FR 111), as applicable.

2. Paragraphs (a), (b), and (c)(4) of § 1910.16 are revised to read as follows:

§ 1910.16 Longshoring and marine terminals.

(a) *Safety and health standards for longshoring.* (1) Part 1918 of this chapter shall apply exclusively, according to the provisions thereof, to all employment of every employee engaged in longshoring operations or related employment aboard any vessel. All cargo transfer accomplished with the use of shore-based material handling devices shall be governed by part 1917 of this chapter.

(2) Part 1910 does not apply to longshoring operations except for the following provisions:

(i) *Access to employee exposure and medical records.* Subpart Z, § 1910.1020;

(ii) *Commercial diving operations.* Subpart T;

(iii) *Electrical.* Subpart S when shore-based electrical installations provide power for use aboard vessels;

(iv) *Hazard communication.* Subpart Z, § 1910.1200;

(v) *Ionizing radiation.* Subpart Z, § 1910.1096;

(vi) *Noise.* Subpart G, § 1910.95;

(vii) *Nonionizing radiation.* Subpart G, § 1910.97;

Note to paragraph (a)(2)(vii): Exposures to nonionizing radiation emissions from commercial vessel transmitters are considered hazardous under the following conditions: (1) where the radar is transmitting, the scanner is stationary, and the exposure distance is 18.7 feet (6 m.) or less; or (2) where the radar is transmitting, the scanner is rotating, and the exposure distance is 5.2 feet (1.8 m.) or less,

(viii) *Respiratory protection.* Subpart I, § 1910.134;

(ix) *Toxic and hazardous substances.* Subpart Z applies to marine cargo handling activities except for the following:

(A) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements;[1]

(B) Bloodborne pathogens, § 1910.1030;

(C) Carbon monoxide, § 1910.1000 (See § 1918.94 (a)); and

(D) Hydrogen sulfide, § 1910.1000 (See § 1918.94 (f)).

(b) *Safety and health standards for marine terminals.* Part 1917 of this chapter shall apply exclusively, according to the provisions thereof, to employment within a marine terminal, except as follows:

(1) The provisions of part 1917 of this chapter do not apply to the following:

(i) Facilities used solely for the bulk storage, handling, and transfer of flammable and combustible liquids and gases.

(ii) Facilities subject to the regulations of the Office of Pipeline Safety of the Research and Special Programs Administration, Department of Transportation (49 CFR chapter I, subchapter D), to the extent such regulations apply to specific working conditions.

(iii) Fully automated bulk coal handling facilities contiguous to electrical power generating plants.

(2) Part 1910 does not apply to marine terminals except for the following:

(i) *Abrasive blasting.* Subpart G, § 1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart Z, § 1910.1020;

(iii) *Commercial diving operations.* Subpart T;

(iv) *Electrical.* Subpart S;

(v) *Grain handling facilities.* Subpart R, § 1910.272;

(vi) *Hazard communication.* Subpart Z, § 1910.1200;

(vii) *Ionizing radiation.* Subpart Z, § 1910.1096;

(viii) *Noise.* Subpart G, § 1910.95;

(ix) *Nonionizing radiation.* Subpart G, § 1910.97.

(x) *Respiratory protection.* Subpart I, § 1910.134.

(xi) *Safety requirements for scaffolding.* Subpart D, § 1910.28;

(xii) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177; and

(xiii) *Toxic and hazardous substances.* Subpart Z applies to marine cargo handling activities except for the following:

(A) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements; [2]

(B) Bloodborne pathogens, § 1910.1030;

(C) Carbon monoxide, § 1910.1000 (See § 1917.24(a)); and

(D) Hydrogen sulfide, § 1910.1000 (See § 1917.73(a)(2)).

(c) * * *

(4) *Marine terminal* means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidation and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal nor does the term include storage facilities directly associated with those production or manufacturing areas.

PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Subpart A—Scope and Definitions

2. Section 1917.1 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2)(i) through (a)(2)(x) and by adding paragraphs (a)(2)(xi) through (a)(2)(xiii) and (b) to read as follows:

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

[2] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

§ 1917.1 Scope and applicability.

(a) The regulations of this part apply to employment within a marine terminal as defined in § 1917.2(u), including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by this part.

(1) * * *

(2) * * *

(i) *Abrasive blasting.* Subpart G, § 1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart Z, § 1910.1020;

(iii) *Commercial diving operations.* Subpart T of part 1910;

(iv) *Electrical.* Subpart S of part 1910;

(v) *Grain handling facilities.* Subpart R, § 1910.272;

(vi) *Hazard communication.* Subpart Z, § 1910.1200;

(vii) *Ionizing radiation.* Subpart Z, § 1910.1096;

(viii) *Noise.* Subpart G, § 1910.95;

(ix) *Nonionizing radiation.* Subpart G, § 1910.97;

(x) *Respiratory protection.* Subpart I, § 1910.134;

(xi) *Safety requirements for scaffolding.* Subpart D, § 1910.28;

(xii) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177; and

(xiii) *Toxic and hazardous substances.* Subpart Z applies to marine cargo handling activities except for the following:

(A) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements; [1]

(B) Bloodborne pathogens, § 1910.1030;

(C) Carbon monoxide, § 1910.1000 (See § 1917.24(a)); and

(D) Hydrogen sulfide, § 1910.1000 (See § 1917.73(a)(2)).

(b) [Reserved]

3. In § 1917.2, the letter designations to each definition are removed and the definitions are placed in alphabetical order and the definitions for the terms intermodal container and marine terminal are revised to read as follows:

§ 1917.2 Definitions.

* * * * *

Intermodal container means a reusable cargo container of a rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

* * * * *

Marine terminal means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas nor does the term include storage facilities directly associated with those production or manufacturing areas.

* * * * *

4. A new § 1917.3 is added to subpart A to read as follows:

§ 1917.3 Incorporation by reference.

(a) (1) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (i.e. provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210.

(3) The materials listed in paragraph (b) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. These incorporations by reference (IBRs) were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(4) Copies of the following standards that are issued by the respective private standards organizations may be obtained from the issuing organizations. The materials are available for purchase at the corresponding addresses of the private standards organizations noted in paragraph (b) of this section. In addition, all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC, and through the OSHA Docket Office, room N2625, U.S. Department of Labor, 200 Constitution Ave., Washington, DC 20210, or any of OSHA's regional offices.

(b) The following material is available for purchase from the American National Standards Institute (ANSI), 11 West 42nd St., New York, NY 10036:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders; BR approved for § 1917.119(c).

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders; BR approved for § 1917.119(c).

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders; IBR approved for § 1917.119(c).

(4) ANSI Z–87.1–1989, Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1917.91(a)(1).

(5) ANSI Z–89.1–1986, Personnel Protection-Protective Headwear for Industrial Workers-Requirements; IBR approved for § 1917.93(b).

(6) ANSI Z–41–1991, American National Standard for Personal Protection-Protective Footwear; IBR approved for § 1917.94(b).

Subpart B—Marine Terminal Operations

5. Section 1917.11 is amended by adding a new paragraph (d) to read as follows:

§ 1917.11 Housekeeping.

* * * * *

(d) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the immediate work area or if left in the

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

area, the nails shall be rendered harmless.

6. Section 1917.13 is amended by revising paragraph (g) and by adding new paragraphs (h) and (i) to read as follows:

§ 1917.13 Slinging.

* * * * *

(g) Intermodal containers shall be handled in accordance with § 1917.71(f).

(h) The employer shall require employees to stay clear of the area beneath overhead drafts or descending lifting gear.

(i) Employees shall not be permitted to ride the hook or the load.

7. Section 1917.17 is amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 1917.17 Railroad facilities.

* * * * *

(i) If powered industrial trucks are used to open railcar doors, the trucks or the railcar doors shall be equipped with door opening attachments. Employees shall stand clear of the railcar doors while they are being opened and closed.

(j) Only railcar door openers or powered industrial trucks equipped with door opening attachments shall be used to open jammed doors.

(k) Employees shall not remain in or on gondolas or flat cars when drafts that create overhead, caught-in, caught-between or struck-by hazards are being landed in or on the railcar; end gates, if raised, shall be secured.

* * * * *

8. Section 1917.20 is revised to read as follows:

§ 1917.20 Interference with communications.

Cargo handling operations shall not be carried on when noise-producing, maintenance, construction or repair work interferes with the communication of warnings or instructions.

9. Section 1917.23 is amended by revising the heading and paragraphs (b)(1) and (d) introductory text to read as follows:

§ 1917.23 Hazardous atmospheres and substances (See also § 1917.2(r)).

* * * * *

(b) *Determination of hazard.* (1) When the employer is aware that a room, building, vehicle, railcar, or other space contains or has contained a hazardous atmosphere, a designated and appropriately equipped person shall test the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

* * * * *

(d) *Entry into hazardous atmospheres.* Only designated persons shall enter hazardous atmospheres, in which case the following shall apply:

* * * * *

10. Section 1917.24, is amended by revising paragraph (a) to read as follows:

§ 1917.24 Carbon monoxide.

(a) *Exposure limits.* The carbon monoxide content of the atmosphere in a room, building, vehicle, railcar, or any enclosed space shall be maintained at not more than 50 parts per million (ppm) (0.005%) as an eight hour average area level and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds a ceiling of 100 ppm (0.01%).

* * * * *

11. Section 1917.25 is amended by revising paragraphs (a) and (c) and adding a new paragraph (g) to read as follows:

§ 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (See also § 1917.2(p)).

(a) At any time that the concentration in any space reaches the level specified as hazardous by the fumigant manufacturer or by Table Z-1 of 29 CFR 1910.1000, whichever is lower, all employees shall be removed from the space and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is safe.

* * * * *

(c) Results of any tests shall be available for at least 30 days. Such records may be entered on any retrievable medium, and shall be available for inspection.

* * * * *

(g) In the case of containerized shipments of fumigated tobacco, the contents of the container shall be aerated by opening the container doors for a period of 48 hours after the completion of fumigation and prior to loading. When tobacco is within shipping cases having polyethylene or similar bag liners, the aeration period shall be 72 hours. The employer shall obtain a written warranty from the fumigation facility stating that the appropriate aeration period has been met.

12. Section 1917.26 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1917.26 First aid and lifesaving facilities.

* * * * *

(c) *First aid kit.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a person certified in first aid and cognizant of the hazards found in marine cargo handling operations. The contents shall be checked at intervals that allow prompt replacement of expended items.

(d) *Stretchers.* (1) There shall be available for each vessel being worked one Stokes basket stretcher, or its equivalent, permanently equipped with bridles for attaching to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage to the stretcher.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five, and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured and have no burrs. Damaged stretchers shall not be used until repaired.

(7) Stretchers in permanent locations shall be mounted to prevent damage and shall be protected from the elements if located out-of-doors. If concealed from view, closures shall be marked to indicate the location of the life saving equipment.

* * * * *

13. Section 1917.27 is amended by revising paragraph (a)(2) and adding a note to read as follows:

§ 1917.27 Personnel.

(a) * * *

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments that may suddenly incapacitate the employee, shall be permitted to operate a crane, winch or other power-operated cargo handling apparatus or a power-operated vehicle.

Note to paragraph (a)(2): OSHA is defining suddenly incapacitating medical ailments consistent with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990). Therefore, employers who act in accordance with the employment provisions (Title I) of the ADA (42 U.S.C. 12111–12117), the regulations implementing Title I (29 CFR part 1630), and the Technical Assistance Manual for Title I issued by the Equal Employment Opportunity Commission (Publication number: EEOC—M1A), will be

considered as being in compliance with this paragraph.

* * * * *

14. Section 1917.28 is amended by removing the regulatory text and revising the section heading to read as follows:

§ 1917.28 Hazard communication (See also § 1917.1(a)(2)(vi)).

15. A new section 1917.30, *Emergency action plans,* is added to subpart B to read as follows:

§ 1917.30 Emergency action plans.

(a) *Emergency action plans.* (1) *Scope and application.* This paragraph (a) requires all employers to develop and implement an emergency action plan. The emergency action plan shall be in writing (except as provided in the last sentence of paragraph (a)(5)(iii) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

(2) *Elements.* The following elements, at a minimum, shall be included in the plan:

(i) Emergency escape procedures and emergency escape route assignments;

(ii) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate;

(iii) Procedures to account for all employees after emergency evacuation has been completed;

(iv) Rescue and medical duties for those employees who are to perform them;

(v) The preferred means of reporting fires and other emergencies; and

(vi) Names or regular job titles of persons or departments that can be contacted for further information or explanation of duties under the plan.

(3) *Alarm system.* The employer shall establish an employee alarm system that provides warning for necessary emergency action and for reaction time for safe escape of employees from the workplace or the immediate work area.

(4) *Evacuation.* The employer shall establish the types of evacuation to be used in emergency circumstances.

(5) *Training.* (i) Before implementing the emergency action plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.

(ii) The employer shall review the plan with each employee covered by the plan at the following times:

(A) Initially when the plan is developed;

(B) Whenever the employee's responsibilities or designated actions under the plan change; and

(C) Whenever the plan is changed.

(iii) The employer shall review with each employee upon initial assignment those parts of the plan that the employee must know to protect the employee in the event of an emergency. The written plan shall be kept at the workplace and be made available for employee review.

(iv) Employers with 10 or fewer employees may communicate the plan orally to employees and need not maintain a written plan

(b) [Reserved]

Subpart C—Cargo Handling Gear and Equipment

16. Section 1917.42 is amended by revising paragraphs (b)(4), (Table C–1 remains unchanged), (c)(1) and (d), adding (g)(2)(vi), and revising (h)(4), (h)(5), and (j)(1) to read as follows:

§ 1917.42 Miscellaneous auxiliary gear.

* * * * *

(b) * * *

(4) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturers' recommendations, which shall be made available for inspection. If ''U'' bolt clips are used and the manufacturers' recommendations are not available, Table C–1 shall be used to determine the number and spacing of the clips. ''U'' bolts shall be applied with the ''U'' section in contact with the dead end of the rope.

* * * * *

(c) * * *

(1) The employer shall ascertain the manufacturers' ratings for the specific natural fiber rope used and have such ratings available for inspection. The manufacturers' ratings shall be adhered to and a minimum design safety factor of five maintained.

* * * * *

(d) *Synthetic rope.* (1) The employer shall adhere to the manufacturers' ratings and use recommendations for the specific synthetic fiber rope used and shall make such ratings available for inspection.

(2) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for fiber ropes of less than three inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for fiber rope of three inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$C=\sqrt{0.6Cs^2+0.4C_m^2}$

Where C= the required circumference of the synthetic rope in inches, Cs= the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size fiber rope that is required by paragraph (c) of this section and Cm= the circumference of the fiber rope in inches that is required by paragraph (c) of this section. In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fiber are suitable for hoisting.

* * * * *

(g) * * *

(2) * * *

(vi) Display of visible warning threads or markers designed to indicate excessive wear or damage.

* * * * *

(h) * * *

(4) Chains shall be repaired only under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(iii) of this section shall be replaced with properly dimensioned links or connections of material similar to those of the original chain. Before repaired chains are returned to service, they shall be tested to the proof load recommended by the manufacturer of the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

* * * * *

(j) *Hooks other than hand hooks.* (1) The manufacturers' recommended safe working loads for hooks shall not be exceeded. Hooks other than hand hooks shall be tested in accordance with § 1917.50(c)(6).

* * * * *

17. Section 1917.43 is amended by revising paragraphs (e)(1)(i), (e)(6)(iii), and by adding a new paragraph (f)(3) to read as follows:

§ 1917.43 Powered industrial trucks.

* * * * *

(e) *Fork lift trucks.* (1) *Overhead guards.* (i) When operators are exposed to overhead falling hazards, fork lift trucks shall be equipped with securely attached overhead guards. Guards shall be constructed to protect the operator

from falling boxes, cartons, packages, or similar objects.

* * * * *

(6) *Lifting of employees.* * * *

(iii) An employee shall be at the truck's controls whenever employees are elevated.

* * * * *

(f) * * *

(3) After July 26, 1999 bulk cargo-moving vehicles shall be equipped with rollover protection of such design and construction as to prevent the possibility of the operator being crushed because of a rollover or upset.

* * * * *

18. Section 1917.44 is amended by revising paragraphs (a), (i), (o)(3)(i), (o)(3)(ii) introductory text, and (o)(4) introductory text to read as follows:

§ 1917.44 General rules applicable to vehicles.[4]

(a) The requirements of this section apply to general vehicle use within marine terminals. *Exception:* The provisions of paragraphs (c) and (l) of this section do not apply when preempted by applicable regulations of the Department of Transportation.[5]

* * * * *

(i) A distance of not less than 20 feet (6.1 m) shall be maintained between the first two vehicles in a check-in, check-out, roadability, or vessel loading/discharging line. This distance shall be maintained between any subsequent vehicles behind which employees are required to work.

* * * * *

(o) * * *

(3) * * *

(i) Only employees trained in the procedures required in paragraph (o)(4) of this section and who have demonstrated their ability to service multi-piece rim wheels shall be assigned such duties.

(ii) Employees assigned such duties shall have demonstrated their ability by the safe performance of the following tasks: * * *

(4) *Servicing procedures.* The following procedures shall be followed:

* * * * *

19. Section 1917.45 is amended by revising the section heading, paragraphs (f)(4)(iii), (f)(5), (f)(7), (f)(13)(ii), (f)(13)(iii)(A), (i)(5)(i) introductory text, (j)(1)(iii)(D), and (j)(2), and by adding new paragraphs (g)(11), (j)(9) and (j)(10), to read as follows:

§ 1917.45 Cranes and derricks (See also § 1917.50).

* * * * *

(f) * * *

(4) * * *

(iii) Stairways on cranes shall be equipped with rigid handrails meeting the requirements of § 1917.112(e).

* * * * *

(5) *Operator's station.* (i) The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent. Cranes with missing, broken, cracked, scratched, or dirty glass (or equivalent) that impairs operator visibility shall not be used. Clothing, tools and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(ii) A seat (lap) belt, meeting the requirements of 49 CFR 571.208–210 for a Type 1 seat belt assembly, shall be installed on the operator's seat of high speed container gantry cranes where the seat trolleys.

* * * * *

(7) *Outriggers.* Outriggers shall be used according to the manufacturers' specifications or design data, which shall be available. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

* * * * *

(13) * * *

(ii) Each independent hoisting unit of a crane, except worm geared hoists, the angle of whose worm is such as to prevent the load from accelerating in the lowering direction, shall, in addition to a holding brake, be equipped with a controlled braking means to control lowering speeds.

(iii) * * *

(A) 125 percent when used with an other than mechanically controlled braking means; or

* * * * *

(g) * * *

(11) Limit switch bypass systems shall be secured during all cargo operations. Such bypass systems shall not be used except in an emergency or during non-cargo handling operations such as stowing cranes or derricks or performing repairs. When a situation requiring the use of a bypass system or the readjustment of a limit switch arises, it shall be done only under the direction of a crane mechanic.

* * * * *

(i) * * *

(5) *Operating near electric power lines.* (i) *Clearance.* Unless electrical distribution and transmission lines are de-energized and visibly grounded at the point of work, or unless insulating barriers not a part of or attached to the crane have been erected to prevent physical contact with lines, cranes may be operated near power lines only in accordance with the following:

* * * * *

(j) * * *

(1) * * *

(iii) * * *

(D) Equipped with a device to prevent access doors, when used, from opening accidentally;

* * * * *

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate only in power up and power down, with automatic brake application when not hoisting or lowering.

* * * * *

(9) Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

(10) All cranes and derricks used to hoist personnel shall be equipped with an anti-two-blocking device.

* * * * *

20. Section 1917.46 is amended by revising the heading and paragraphs (a)(1)(ii) and (a)(1)(viii)(A) to read as follows:

§ 1917.46 Load indicating devices.

(a) * * *

(1) * * *

(ii) The accuracy of the load indicating device, weight-moment device, or overload protection device shall be such that any indicated load (or limit), including the sum of actual weight hoisted and additional equipment or ''add ons'' such as slings, sensors, blocks, etc., is within the range between 95 percent (5 percent underload) and 110 percent (10 percent overload) of the actual true total load. Such accuracy shall be required over the range of daily operating variables reasonably anticipated under the conditions of use.

* * * * *

(viii) * * *

(A) Of trolley equipped bridge type or overhead type while handling intermodal containers known to be identified as empty, or loaded, and in

[4] The United States Coast Guard at 33 CFR 126.15(d) and (e) has additional regulations applicable to vehicles in terminals.

[5] Department of Transportation regulations in 49 CFR part 393, Subpart C–Brakes, address the immobilization of trailer road wheels prior to disconnection of the trailer and until braking is again provided. Section 49 CFR 393.84 addresses the condition of flooring. These DOT rules apply when the motor carrier is engaged in interstate commerce or in the transport of certain hazardous items wholly within a municipality or the commercial zone thereof.

either case in compliance with the provisions of § 1917.71, or while hoisting other lifts by means of a lifting beam supplied by the crane manufacturer for the purpose, and in all cases within the crane rating;

* * * * *

21. Section 1917.48 is amended by revising paragraph (d)(2) to read as follows:

§ 1917.48 Conveyors.

* * * * *

(d) * * *

(2) Conveyors using electrically released brakes shall be constructed so that the brakes cannot be released until power is applied, and so that the brakes are automatically engaged if the power fails or the operating control is returned to the ''stop'' position.

* * * * *

22. Section 1917.50 is amended by revising the heading and paragraph (c)(5), by redesignating paragraph (i) as new paragraph (j), and revising it, and by adding a new paragraph (i) to read as follows:

§ 1917.50 Certification of marine terminal material handling devices (See also mandatory Appendix IV, part 1918 of this chapter).

* * * * *

(c) * * *

(5) *Special gear.* (i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, and that has a Safe Working Load (SWL) greater than five short tons (10,000 lbs or 4.5 metric tons) shall be inspected and tested as a unit before initial use (see Table A of this section).

(ii) Special stevedoring gear provided by the employer that has a SWL of five short tons (10,000 or 4.5 metric tons) or less shall be inspected and tested as a unit before initial use according to paragraphs (d) and (e) of this section or by a designated person (see Table A).

TABLE A

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess.
From 20 through 50 short tons (18.1 to 45.3 metric tons).	5 short tons in excess.
Over 50 short tons (45.3 metric tons).	10 percent in excess.

(iii) Every spreader that is not a part of ship's gear and is used for handling intermodal containers shall be inspected and tested before initial use to a proof load equal to 25 percent greater than its rated capacity. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(iv) All cargo handling gear covered by this section with a SWL greater than five short tons (10,000 lbs. or 4.5 metric tons) shall be proof load tested according to table A of this section every 4 years in accordance with paragraph (b) of this section or by a designated person.

(v) Certificates and inspection and test records attesting to the tests required by this section shall be available for inspection.

* * * * *

(i) *Safe working load.* (1) The safe working load of gear as specified in this section shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than five short tons (10,000 lbs. or 4.5 metric tons) shall have its safe working load plainly marked on it.

(j) *Exceptions:* The certification requirements of this section do not apply to the following equipment:

(1) Small industrial crane trucks as described and illustrated in ANSI B56.1, 1959, ''Safety Code for Powered Industrial Trucks'', and powered industrial trucks; and

(2) Any straddle truck not capable of straddling two or more intermodal containers 16 feet (4.8 m) in width.

* * * * *

23. Section 1917.71 is amended by revising paragraphs (b)(6), (b)(7), (c), (e), and (f)(1)(i) and adding new paragraphs (b)(8), (f)(4) and (f)(5) to read as follows:

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

* * * * *

(b) * * *

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section provided that:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside in such a manner that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing or by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the purpose of the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is located.

(c) No container or containers shall be hoisted if their actual gross weight exceeds the weight marked as required in paragraph (a)(2) of this section, or if it exceeds the capacity of the crane or other hoisting device intended to be used.

* * * * *

(e) Each employee working in the immediate area of container handling equipment or in the terminal's traffic lanes shall wear a high visibility vest (or equivalent protection).[7]

Note to paragraph (3e): High visibility vests or equivalent protection means high visibility/retroreflective materials which are intended to provide conspicuity of the user by day through the use of high visibility (fluorescent) material and in the dark by vehicle headlights through the use of retroreflective material. The minimum area of material for a vest or equivalent protection is .5 m^2 (760 $in.^2$) for fluorescent (background) material and .13m^2 (197 $in.^2$) for retroreflective material.

(f) * * *

(1) * * *

(i) When hoisting containers by the top fittings, the lifting forces shall be applied vertically from at least four such fittings. A less than vertical lift is permitted only under the following conditions:

(A) The container being lifted is an ISO closed box container;

(B) The condition of the box is sound;

(C) The speed of hoisting and lowering is moderated when heavily ladened containers[8] are encountered;

(D) The lift angle is at 80 to 90 degrees;

(E) The distance between the lifting beam and the load is at least 8 feet and 2.4 inches (2.5 m); and

(F) The length of the spreader beam is at least 16.3 feet (5 m) for a 20-foot container, and at least 36.4 feet (11 m) for a 40-foot container.

* * * * *

(4) After July 27, 1998, flat bed, low boy trailers (mafis) and other similar equipment used to transport containers shall be marked with their cargo capacities and shall not be overloaded.

(5) Each tractor shall have all brake air lines connected when pulling trailers equipped with air brakes and shall have the brakes tested before commencing operations.

* * * * *

[7] Decals on hard hats will not be considered equivalent protection for the purposes of this paragraph.

[8] A heavily laden container is one that is loaded to within 20 percent of its rated capacity.

24. Section 1917.73 is amended by revising the section heading as follows:

§ 1917.73 Terminal facilities handling menhaden and similar species of fish (See also § 1917.2, definition of hazardous cargo, materials, substance, or atmosphere).

* * * * *

25. Section 1917.91 is amended by revising paragraph (a)(1) and revising the section heading to read as follows:

§ 1917.91 Eye and face protection.

(a)(1) The employer shall ensure that each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Such equipment shall comply with American National Standards Institute, ANSI Z–87.1–1989, ''Practice for Occupational and Educational Eye and Face Protection.''

* * * * *

26. Section 1917.93 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1917.93 Head protection.

(a) The employer shall ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling objects.

(b) Such equipment shall comply with American National Standards Institute, ANSI Z–89.1–1986, ''Personnel Protection-Protective Headwear for Industrial Workers-Requirements.''

* * *

27. Section 1917.94 is revised to read as follows:

§ 1917.94 Foot protection.

(a) The employer shall ensure that each affected employee wears protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole.

(b) Such equipment shall comply with American National Standards

Institute, ANSI Z–41–1991, ''American National Standard for Personal Protection-Protective Footwear.''

28. Section 1917.95 is amended by revising paragraph (b)(2) to read as follows:

§ 1917.95 Other protective measures.

* * * * *

(b) * * *

(2) Personal flotation devices (PFD) (life preservers, life jackets, and work vests) worn by each affected employee shall be any United States Coast Guard (USCG) approved and marked Type I PFD, Type II PFD or Type III PFD; or shall be a USCG approved Type V PFD that is marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.

* * * * *

29. Section 1917.112 is amended by revising paragraph (a)(1) to read as follows:

§ 1917.112 Guarding of edges.

(a) * * *

(1) Vehicle curbs, bull rails, or other effective barriers at least six inches (15.24 cm) in height shall be provided at the waterside edges of aprons and bulkheads, except where vehicles are prohibited. Curbs or bull rails installed after October 3, 1983, shall be at least 10 inches (25.4 cm) in height.

* * * * *

30. Section 1917.118 is amended by revising paragraphs (d)(2)(i) and (f)(2) to read as follows:

§ 1917.118 Fixed ladders.

* * * * *

(d) * * *

(2)(i) Ladders installed before October 3, 1983, shall have rungs evenly spaced from nine to 16½ inches (22.9 to 41.9 cm) apart, center to center.

* * * * *

(f) * * *

(2) Form a continuous ladder, uniformly spaced vertically from 12 inches to 16 inches (30.5 to 41 cm) apart, with a minimum width of 10 inches (25.4 cm) and projecting at least 4½ inches (11.43 cm) from the wall;

* * * * *

31. Section 1917.119 is amended by revising paragraphs (b)(1), (c), (d)(2), and (f)(4) to read as follows:

§ 1917.119 Portable ladders.

* * * * *

(b) * * *

(1) Rungs of manufactured portable ladders obtained before October 3, 1983, shall be capable of supporting a 200-pound (890 N) load without deformation.

* * * * *

(c) *Standards for manufactured portable ladders.* Portable manufactured ladders obtained after January 21, 1998 shall bear identification indicating that they meet the appropriate ladder construction requirements of the following standards:

ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders

ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders

ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders

(d) * * *

(2) Are capable of supporting a 250-pound (1120 N) load without deformation; and

* * * * *

(f) * * *

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

* * * * *

32. Section 1917.121 is amended by revising paragraph (b)(3) to read as follows:

§ 1917.121 Spiral stairways.

* * * * *

(b) * * *

(3) Minimum loading capability shall be 100 pounds per square foot (4.79 kN), and minimum tread center concentrated loading shall be 300 pounds (1334 N);

* * * * *

32a. Section 1917.123 is amended by redesignating footnote 7 as footnote 9.

33. Section 1917.124 is amended by adding new paragraphs (c)(5), (c)(6), and (d)(5) and revising the section heading and paragraph (d)(1) to read as follows:

§ 1917.124 Dockboards (car and bridge plates).

* * * * *

(c) * * *

(5) Be designed, constructed, and maintained to prevent vehicles from running off the edge.[10]

(6) Dockboards shall be well maintained.

* * * * *

(d) *Ramps.* (1) Ramps shall be strong enough to support the loads imposed on them and be designed, constructed, and maintained to prevent vehicles from running off the edge.[11]

* * * * *

(5) Ramps shall be well maintained.

34. Section 1917.126 is amended by revising paragraph (b) to read as follows:

§ 1917.126 River banks.

* * * * *

(b) Where working surfaces at river banks slope so steeply that an employee could slip or fall into the water, the outer perimeter of the working surface shall be protected by posting or other portable protection such as roping off. In these situations, employees must wear a personal flotation device meeting the requirements of § 1917.95(b).

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[10] When the gap to be bridged to greater than 36 inches (.91 m), an acceptable means of preventing vehicles from running off the edge is a minimum side board height of two and three-quarter inches.

[11] When the gap to be bridged is greater than 36 inches (.91 m), an acceptable means of preventing vehicles from running off the edge is a minumum side board height of two and three-quarter inches.

35. Section 1917.152 is amended by revising the section heading and redesignating footnote 8 as footnote 12 to read as follows:

§ 1917.152 Welding, cutting and heating (hot work)[12] (See also § 1917.2, definition of Hazardous cargo, materials, substance, or atmosphere).

* * * * *

36. Section 1917.153 is amended by revising the section heading to read as follows:

§ 1917.153 Spray painting (See also § 1917.2, definition of Hazardous cargo, materials, substance, or atmosphere).

* * * * *

37. Section 1917.156 is amended by revising paragraph (b)(3)(iii)(D) to read as follows:

§ 1917.156 Fuel handling and storage.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(D) Leakage at valves or connections; and

* * * * *

38. Section 1917.157 is amended by revising paragraph (n) to read as follows:

§ 1917.157 Battery charging and changing.

* * * * *

(n) Chargers shall be turned off when leads are being connected or disconnected.

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PART 1918—[REVISED]

Part 1918 is revised to read as follows:

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

Subpart A—Scope and Definitions

Sec.
1918.1 Scope and application.
1918.2 Definitions.
1918.3 Incorporation by reference

Subpart B—Gear Certification

1918.11 Gear certification (See also §§ 1918.2 and 1918.51).

Subpart C—Gangways and Other Means of Access

1918.21 General requirements.
1918.22 Gangways.
1918.23 Jacob's ladders.
1918.24 Fixed and portable ladders.
1918.25 Bridge plates and ramps (See also § 1918.86).
1918.26 Access to barges and river towboats.

Subpart D—Working Surfaces 1918.31 Hatch coverings.

1918.32 Stowed cargo and temporary landing surfaces.
1918.33 Deck loads.
1918.34 Other decks.
1918.35 Open hatches.
1918.36 Weather deck rails.
1918.37 Barges.

Subpart E—Opening and Closing Hatches

1918.41 Coaming clearances.
1918.42 Hatch beam and pontoon bridles.
1918.43 Handling hatch beams and covers.

Subpart F—Vessel's Cargo Handling Gear

1918.51 General requirements (See also § 1918.11 and Appendix III of this part).
1918.52 Specific requirements.
1918.53 Cargo winches.
1918.54 Rigging gear.
1981.55 Cranes (See also § 1918.11).

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

1918.61 General (See also Appendix IV of this part).
1918.62 Miscellaneous auxiliary gear.
1918.63 Chutes, gravity conveyors and rollers.
1918.64 Powered conveyors.
1918.65 Mechanically-powered vehicles used aboard vessels.
1918.66 Cranes and derricks other than vessel's gear.
1918.67 Notifying ship's officers before using certain equipment.
1918.68 Grounding.
1918.69 Tools.
1918.70–.80 [Reserved]

Subpart H—Handling Cargo

1918.81 Slinging.
1918.82 Building drafts.
1918.83 Stowed cargo; tiering and breaking down.
1918.84 Bulling cargo.
1918.85 Containerized cargo operations.
1918.86 Roll-on roll-off (Ro-Ro) operations (See also § 1918.25).
1918.87 Ship's cargo elevators.
1918.88 Log operations.
1918.89 Handling hazardous cargo (See also § 1918.2 and § 1918.99).

Subpart I—General Working Conditions

1918.90 Hazard communication (See also § 1918.1(b)(4)).
1918.91 Housekeeping.
1918.92 Illumination.
1918.93 Hazardous atmospheres and substances (See also § 1918.2(j)).
1918.94 Ventilation and atmospheric conditions (See also § 1918.2).
1918.95 Sanitation.
1918.96 Maintenance and repair work in the vicinity of longshoring operations.
1918.97 First aid and lifesaving facilities. (See Appendix V of this part).
1918.98 Qualifications of machinery operators and supervisory training.
1918.99 Retention of DOT markings, placards, and labels.
1918.100 Emergency action plans.

Subpart J—Personal Protective Equipment

1918.101 Eye and face protection.
1918.102 Respiratory protection.
1918.103 Head protection.
1918.104 Foot protection.
1918.105 Other protective measures.

Appendix I—Cargo Gear Register and Certificates (Non-mandatory)
Appendix II—Tables for Selected Miscellaneous Auxiliary Gear (Mandatory)
Appendix III—The Mechanics of Conventional Cargo Gear (Non-mandatory)
Appendix IV—Special Cargo Gear (Mandatory)
Appendix V—Basic Elements of a First Aid Training Program (Non-Mandatory)

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 *et seq.*; Service Contract Act of 1965, 41 U.S.C. 351 *et seq.*; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 *et seq.*; Secretary of Labor's Order No. 6–96 (62 FR 111).

Subpart A—Scope and Definitions

§ 1918.1 Scope and application.

(a) The regulations of this part apply to longshoring operations and related employments aboard vessels. All cargo transfer accomplished with the use of shore-based material handling devices is covered by part 1917 of this chapter.

(b) Part 1910 of this chapter does not apply to longshoring except for the following provisions:

(1) *Access to employee exposure and medical records.* Subpart Z, § 1910.1020;

(2) *Commercial diving operations.* Subpart T;

(3) *Electrical.* Subpart S when shore-based electrical installations provide power for use aboard vessels;

(4) *Hazard communication.* Subpart Z, § 1910.1200;

(5) *Ionizing radiation.* Subpart Z, § 1910.1096;

(6) *Noise.* Subpart G, § 1910.95;

(7) *Nonionizing radiation.* Subpart G, § 1910.97;

Note to paragraph (b)(7): Exposures to nonionizing radiation emissions from commercial vessel radar transmitters are considered hazardous under the following situations: (a) where the radar is transmitting, the scanner is stationary, and the exposure distance is 19 feet (6 m) or less; or (b) where the radar is transmitting, the scanner is rotating, and the exposure distance is 5 feet (1.8 m.) or less.

(8) *Respiratory protection.* Subpart I, § 1910.134; and

(9) *Toxic and hazardous substances.* Subpart Z applies to marine cargo

[12] The U.S. Coast Guard, at 33 CFR 126.15(c), requires prior permission of the Captain of the Port if welding or other hot work is to be carried out at a facility where dangerous cargoes as defined by 33 CFR 126.07 are located or being handled.

handling activities except for the following:

(i) When a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements;[1]

(ii) Bloodborne pathogens, § 1910.1030;

(iii) Carbon monoxide, § 1910.1000 (See § 1918.94(a)); and

(iv) Hydrogen sulfide, § 1910.1000 (See § 1918.94(f)).

§ 1918.2 Definitions.

Barge means an unpowered, flatbottomed, shallow draft vessel including river barges, scows, carfloats, and lighters. It does not include ship shaped or deep draft barges.

Bulling means the horizontal dragging of cargo across a surface with none of the weight of the cargo supported by the fall.

Danger zone means any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock. Examples of danger zones are nip and shear points, shear lines, drive mechanisms, and areas underneath counterweights.

Designated person means a person who possesses specialized abilities in a specific area and is assigned by the employer to do a specific task in that area.

Dockboards (car and bridge plates) mean devices for spanning short distances between, for example, two barges, that is not higher than four feet (1.2 m) above the water or next lower level.

Employee means any longshore worker or other person engaged in longshoring operations or related employments other than the master, ship's officers, crew of the vessel, or any person engaged by the master to load or unload any vessel of less than 18 net tons.

Employer means a person that employs employees in longshoring operations or related employments, as defined in this section.

Enclosed space means an interior space in or on a vessel that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are holds, deep tanks and refrigerated compartments.

Fall hazard means the following situations:

(1) Whenever employees are working within three feet (.9 m) of the unprotected edge of a work surface that is 8 feet or more (2.4 m) above the adjoining surface and twelve inches (.3 m) or more, horizontally, from the adjacent surface; or

(2) Whenever weather conditions may impair the vision or sound footing of employees working on top of containers.

Fumigant is a substance or mixture of substances, used to kill pests or prevent infestation, that is a gas or is rapidly or progressively transformed to the gaseous state, although some nongaseous or particulate matter may remain and be dispersed in the treatment space.

Gangway means any ramp-like or stair-like means of access provided to enable personnel to board or leave a vessel, including accommodation ladders, gangplanks and brows.

Hatch beam or *strongback* mean a portable transverse or longitudinal beam placed across a hatchway that acts as a bearer to support the hatch covers.

Hazardous cargo, materials, substance or atmosphere means:

(1) Any substance listed in 29 CFR part 1910, subpart Z;

(2) Any material in the Hazardous Materials Table and Hazardous Materials Communications Regulations of the Department of Transportation, 49 CFR part 172;

(3) Any article not properly described by a name in the Hazardous Materials Table and Hazardous Materials Communication Regulations of the Department of Transportation, 49 CFR part 172, but which is properly classified under the definitions of those categories of dangerous articles given in 49 CFR part 173; or

(4) Any atmosphere with an oxygen content of less than 19.5 percent or greater than 23 percent.

Intermodal container means a reusable cargo container of a rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

Longshoring operations means the loading, unloading, moving or handling of cargo, ship's stores, gear, or any other materials, into, in, on, or out of any vessel.

Mississippi River System includes the Mississippi River from the head of navigation to its mouth, and navigable tributaries including the Illinois Waterway, Missouri River, Ohio River, Tennessee River, Allegheny River, Cumberland River, Green River, Kanawha River, Monongahela River, and such others to which barge operations extend.

Public vessel means a vessel owned and operated by a government and not regularly employed in merchant service.

Ramp means other flat surface devices for passage between levels and across openings not covered under the term *dockboards.*

Related employments means any employments performed incidental to or in conjunction with longshoring operations, including, but not restricted to, securing cargo, rigging, and employment as a porter, clerk, checker, or security officer.

River towboat means a shallow draft, low freeboard, self-propelled vessel designed to tow river barges by pushing ahead. It does not include other towing vessels.

Small trimming hatch means a small hatch or opening, pierced in the between deck or other intermediate deck of a vessel, and intended for the trimming of dry bulk cargoes. It does not refer to the large hatchways through which cargo is normally handled.

Vessel includes every description of watercraft or other artificial contrivance used or capable of being used for transportation on water, including special purpose floating structures not primarily designed for or used for transportation on water.

Vessel's cargo handling gear includes that gear that is a permanent part of the vessel's equipment and used for the handling of cargo other than bulk liquids. The term covers all stationary or mobile cargo handling appliances used on board ship for suspending, raising or lowering loads or moving them from one position to another while suspended or supported. This includes, but is not limited to, cargo elevators, forklifts, and other powered industrial equipment. It does not include gear used only for handling or holding hoses, handling ship's stores or handling the gangway, or boom conveyor belt systems for the self-unloading of bulk cargo vessels.

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the international legal requirements of the International Convention for the Safety of Life at Sea, 1960.

§ 1918.3 Incorporation by reference.

(a) (1) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (i.e. provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210.

(3) The materials listed in paragraph (b) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. These incorporations by reference (IBRs) were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(4) Copies of the following standards that are issued by the respective private standards organizations may be obtained from the issuing organizations. The materials are available for purchase at the corresponding addresses of the private standards organizations noted in paragraph (b) of this section. In addition, all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC, and through the OSHA Docket Office, room N2625, U.S. Department of Labor, 200 Constitution Ave., Washington, DC 20210, or any of OSHA's regional offices.

(b) The following material is available for purchase from the American National Standards Institute (ANSI), 11 West 42nd St., New York, NY 10036:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders; IBR approved for § 1918.24(g)(1).

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders; IBR approved for § 1918.24(g)(2).

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders; IBR approved for § 1918.24(g)(3).

(4) ANSI Z–87.1–1989, Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1918.101(a)(1).

(5) ANSI Z–89.1–1986, Personnel Protection-Protective Headwear for Industrial Workers-Requirements; IBR approved for § 1918.103(b).

(6) ANSI Z–41–1991, American National Standard for Personal Protection-Protective Footwear; IBR approved for § 1918.104(b).

Subpart B—Gear Certification

§ 1918.11 Gear certification (See also §§ 1918.2, definition of ''Vessel's cargo handling gear'' and 1918.51).

(a) The employer shall not use the vessel's cargo handling gear until it has been ascertained that the vessel has a current and valid cargo gear register and certificates that in form and content are in accordance with the recommendations of the International Labor Office, as set forth in Appendix I of this part, and as provided by International Labor Organization Convention No. 152, and that shows that the cargo gear has been tested, examined and heat treated by or under the supervision of persons or organizations defined as competent to make register entries and issue certificates pursuant to paragraphs (b) and (c) of this section.

(1) Annual thorough examinations under ILO 152 are required after July 27, 1998.

(2) Testing under ILO 152 is required after July 16, 2001.

(3) In the interim period(s), prior to the effective dates noted in paragraph (a) (1) and (2), vessels with cargo gear and a cargo gear register according to ILO 32 are deemed to meet the requirements of this paragraph (a).

(b) Public vessels and vessels holding a valid Certificate of Inspection issued by the U.S. Coast Guard pursuant to 46 CFR part 91 are deemed to meet the requirements of paragraph (a) of this section.

(c) With respect to U.S. vessels not holding a valid Certificate of Inspection issued by the U.S. Coast Guard, entries in the registers and the issuance of certificates required by paragraph (a) of this section shall be made only by competent persons currently accredited by the U.S. Department of Labor (OSHA) for full function vessels or loose gear and wire rope testing, as appropriate, as provided in part 1919 of this chapter.

(d) With respect to vessels under foreign registries, persons or organizations competent to make entries in the registers and issue the certificates required by paragraph (a) of this section shall be:

(1) Those acceptable as such to any foreign nation;

(2) Those acceptable to the Commandant of the U.S. Coast Guard; or

(3) Those currently accredited by the U.S. Department of Labor (OSHA), for full function vessels or loose gear and wire rope testing, as appropriate and as provided in part 1919 of this chapter.

Subpart C—Gangways and Other Means of Access

§ 1918.21 General requirements.

The employer shall not permit employees to board or leave any vessel, except a barge or river towboat, until all of the applicable requirements of this subpart have been met.

(a) If possible, the vessel's means of access shall be located so that suspended loads do not pass over it. In any event, suspended loads shall not be passed over the means of access while employees or others are on it.

(b) When the upper end of the means of access rests on or is flush with the top of the bulwark, substantial steps, properly secured, trimmed and equipped with at least one substantial handrail, 33 inches (.84 m) in height, shall be provided between the top of the bulwark and the deck.

(c) The means of access shall be illuminated for its full length in accordance with § 1918.92.[2]

§ 1918.22 Gangways.

(a) Whenever practicable, a gangway of not less than 20 inches (.51 m) in width, of adequate strength, maintained in safe repair and safely secured shall be used. If a gangway is not practicable, a straight ladder meeting the requirements of § 1918.24 that extends at least 36 inches (.91 m) above the upper landing surface and is secured against shifting or slipping shall be provided. When conditions are such that neither a gangway nor straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.23 may be used.

(b) Each side of the gangway, and the turntable, if used, shall have a hand rail with a minimum height of 33 inches (.84 m) measured perpendicularly from rail to walking surfaces at the stanchion, with a midrail. Rails shall be of wood, pipe, chain, wire, rope or materials of equivalent strength and shall be kept taut always. Portable stanchions supporting railings shall be supported or secured to prevent accidental dislodgement.

(c) The gangway shall be kept properly trimmed.

(d) When a fixed flat tread accommodation ladder is used, and the angle is low enough to require employees to walk on the edge of the

[2] § 1918.92 requires, along with other requirements, an average light intensity of five foot-candles (54 lux).

treads, cleated duckboards shall be laid over and secured to the ladder.

(e) When the gangway overhangs the water so that there is danger of employees falling between the ship and the dock, a net or suitable protection shall be provided to prevent employees from receiving serious injury from falls to a lower level.

(f) If the foot of a gangway is more than one foot (.30 m) away from the edge of the apron, the space between them shall be bridged by a firm walkway equipped with a hand rail with a minimum height of approximately 33 inches (.84 m) with midrails on both sides.

(g) Gangways shall be kept clear of supporting bridles and other obstructions, to provide unobstructed passage. If, because of design, the gangway bridle cannot be moved to provide unobstructed passage, then the hazard shall be properly marked to alert employees of the danger.

(h) Obstructions shall not be laid on or across the gangway.

(i) Handrails and walking surfaces of gangways shall be maintained in a safe condition to prevent employees from slipping or falling.

(j) Gangways on vessels inspected and certificated by the U.S. Coast Guard are deemed to meet the requirements of this section.

§ 1918.23 Jacob's ladders.

(a) Jacob's ladders shall be of the double rung or flat tread type. They shall be well maintained and properly secured.

(b) A Jacob's ladder shall either hang without slack from its lashings or be pulled up entirely.

(c) When a Jacob's ladder is used as the means of access to a barge being worked, spacers (bumpers) shall be hung between the vessel, barge, or other structure to which the barge is tied alongside, or other equally effective means shall be provided to prevent damage to the bottom rungs of the ladder.

(d) When a Jacob's ladder is being used so that there is a danger of an employee falling or being crushed between the vessel, barge, or other structure (pier), suitable protection shall be provided.

§ 1918.24 Fixed and portable ladders.

(a) There shall be at least one safe and accessible ladder for each gang working in a single hatch. An effective means of gaining a handhold shall be provided at or near the head of each vertical fixed ladder. No more than two ladders are required in any hatch regardless of the number of gangs present.

(b) When any fixed ladder is visibly unsafe (or known to be unsafe), the employer shall identify such ladder and prohibit its use by employees.

(c) Where portable straight ladders are used, they shall be of sufficient length to extend three feet (.91 m) above the upper landing surface, and be positively secured or held against shifting or slipping. When conditions are such that a straight ladder cannot be used, Jacob's ladders meeting the requirements of § 1918.23 may be used.

(d) For vessels built after July 16, 2001, when six inches (15.2 cm) or more clearance does not exist behind the rungs of a fixed ladder, the ladder shall be deemed ''unsafe'' for the purposes of this section. Alternate means of access (for example, a portable ladder) must be used.

(e)(1) Where access to or from a stowed deckload or other cargo is needed and no other safe means is available, ladders or steps of adequate strength shall be furnished and positively secured or held against shifting or slipping while in use. Steps formed by the cargo itself are acceptable when the employer demonstrates that the nature of the cargo and the type of stowage provides equivalent safe access.

(2) Where portable straight ladders are used they shall be of sufficient length to extend at least three feet (.91 m) above the upper landing surface.

(f) The following standards for existing manufactured portable ladders must be met:

(1) Rungs of manufactured portable ladders obtained before January 21, 1998 shall be capable of supporting a 200-pound (890 N) load without deformation.

(2) Rungs shall be evenly spaced from nine to sixteen and one-half inches (22.9 to 41.9 cm), center to center.

(3) Rungs shall be continuous members between rails. Each rung of a double-rung ladder (two side rails and a center rail) shall extend the full width of the ladder.

(4) Width between side rails at the base of the ladder shall be at least 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least one-fourth inch (0.6 cm) for each additional two feet (0.61 m) of ladder length.

(g) Portable manufactured ladders obtained after January 21, 1998 shall bear identification showing that they meet the appropriate ladder construction requirements of the following standards:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders;

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders;

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders.

(h) Job-made ladders shall:

(1) Have a uniform distance between rungs of at least 12 inches (30 cm) center to center;

(2) Be capable of supporting a 250-pound (1100 N) load without deformation; and

(3) Have a minimum width between side rails of 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in height. Width between rails shall increase at least one-fourth inch (0.6 cm) for each additional two feet (0.61 m) of ladder length.

(i) The employer shall:

(1) Maintain portable ladders in safe condition. Ladders with the following defects shall not be used, and shall either be tagged as unusable if kept on board, or shall be removed from the vessel:

(i) Broken, split or missing rungs, cleats or steps;

(ii) Broken or split side rails;

(iii) Missing or loose bolts, rivets or fastenings;

(iv) Defective ropes; or

(v) Any other structural defect.

(2) Ladders shall be inspected for defects before each day's use, and after any occurrence, such as a fall, which could damage the ladder.

(j) Ladders shall be used in the following manner:

(1) Ladders shall be securely positioned on a level and firm base.

(2) Ladders shall be fitted with slip-resistant bases and/or be positively secured or held in place to prevent slipping or shifting while in use.

(3) Except for combination ladders, self-supporting ladders shall not be used as single straight ladders.

(4) Unless intended for cantilever operation, non-self-supporting ladders shall not be used to climb above the top support point.

(5) Ladders shall not be used:

(i) As guys, braces or skids; or

(ii) As platforms, runways or scaffolds.

(6) Metal and wire-reinforced ladders (even with wooden side rails) shall not be used when employees on the ladder might contact energized electrical conductors.

(7) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

(8) Single rail ladders (i.e. made by fastening rungs or devices across a single rail) shall not be used.

§ 1918.25 Bridge plates and ramps (See also § 1918.86).

(a) *Bridge and car plates (dockboards).* Bridge and car plates used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be secured or equipped with devices to prevent their dislodgement;

(3) Be equipped with hand holds or other effective means to permit safe handling; and

(4) Be designed, constructed, and maintained to prevent vehicles from running off the edge.[3]

(b) *Portable ramps.* Portable ramps used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be equipped with a railing meeting the requirements of § 1918.21(b), if the slope is more than 20 degrees to the horizontal or if employees could fall more than four feet (1.2 m);

(3) Be equipped with a slip resistant surface;

(4) Be properly secured; and

(5) Be designed, constructed, and maintained to prevent vehicles from running off the edge.[4]

§ 1918.26 Access to barges and river towboats.

(a) With the exception of § 1918.25(b)(2), ramps used solely for vehicle access to or between barges shall meet the requirements of § 1918.25.

(b) When employees cannot step safely to or from the wharf and a float, barge, or river towboat, either a ramp meeting the requirements of paragraph (a) of this section or a safe walkway meeting the requirements of § 1918.22(f) shall be provided. When a ramp or walkway cannot be used, a straight ladder meeting the requirements of § 1918.24 and extending at least three feet (.91 m) above the upper landing surface and adequately secured or held against shifting or slipping shall be provided. When neither a walkway nor a straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.23 shall be provided. Exception: For barges operating on the Mississippi River System, where the employer shows that these requirements cannot reasonably be met due to local conditions, other safe means of access shall be provided.

[3] When the gap to be bridged is greater than 36 inches (.91m), an acceptalbe means of preventing vehicles from running off the edge is a minimum side board height of two and three-quarter inches.

[4] When the gap to be bridged is greater than 36 inches (.91m), an acceptable means of preventing vehicles from running off the edge is a minimum side board height of two and three-quarter inches.

(c) When a barge or raft is being worked alongside a larger vessel, a Jacob's ladder meeting the requirements of § 1918.23 shall be provided for each gang working alongside unless other safe means of access is provided. However, no more than two Jacob's ladders are required for any single barge or raft being worked.

(d) When longshoring operations are in progress on barges, the barges shall be securely made fast to the vessel, wharf, or dolphins.

Subpart D—Working Surfaces

§ 1918.31 Hatch coverings.

(a) No cargo, dunnage, or other material shall be loaded or unloaded by means requiring the services of employees at any partially opened intermediate deck unless either the hatch at that deck is sufficiently covered or an adequate landing area suitable for the prevailing conditions exists. In no event shall such work be done unless the working area available for such employees extends for a distance of 10 feet (3.05 m) or more fore and aft and athwartships.

(b) Cargo shall not be landed on or handled over a covered hatch or 'tween-decks unless all hatch beams are in place under the hatch covers.

(c) Missing, broken, or poorly fitting hatch covers that would not protect employees shall be reported at once to the officer in charge of the vessel. Pending replacement or repairs by the vessel, work shall not be performed in the section containing the unsafe covers or in adjacent sections unless the flooring is made safe.

(d) Hatch covers and hatch beams not of uniform size shall be placed only in the hatch, deck, and section in which they fit properly.

(e) Small trimming hatches in intermediate decks shall be securely covered or guarded while work is going on in the hatch in which they are found, unless they are actually in use.

§ 1918.32 Stowed cargo and temporary landing surfaces.

(a) Temporary surfaces on which loads are to be landed shall be of sufficient size and strength to permit employees to work safely.

(b) When the edge of a hatch section or of stowed cargo may constitute a fall hazard to an employee, the edge shall be guarded by a vertical safety net, or other means providing equal protection, to prevent an employee from falling. When the employer can demonstrate that vertical nets or other equally effective means of guarding cannot be used due to the type of cargo, cargo stowage, or other circumstances, a trapeze net shall be rigged at the top edge of the elevation or other means shall be taken to prevent injury if an employee falls. Safety nets shall be maintained in good condition and be of adequate strength for the purpose intended.

(c) When two gangs are working in the same hatch on different levels, a vertical safety net shall be rigged and securely fastened to prevent employees or cargo from falling. Safety nets shall be maintained in good condition and be of adequate strength for the purpose intended.

§ 1918.33 Deck loads.

(a) Employees shall not be permitted to pass over or around deck loads unless there is a safe route of passage.

(b) Employees giving signals to crane operators shall not be permitted to walk over deck loads from rail to coaming unless there is a safe route of passage. If it is necessary to stand or walk at the outboard or inboard edge of the deck load having less than 24 inches (.61 m) of bulwark, rail, coaming, or other protection, those employees shall be provided with protection against falling from the deck load.

§ 1918.34 Other decks.

(a) Cargo shall not be worked on decks that were not designed to support the load being worked.

(b) Grated decks shall be properly placed, supported, maintained and designed to support employees.

§ 1918.35 Open hatches.

Open weather deck hatches around which employees must work that are not protected to a height of 24 inches (.61 m) by coamings shall be guarded by taut lines or barricades at a height of 36 to 42 inches (.91 to 1.07 m) above the deck, except on the side on which cargo is being worked. Any portable stanchions or uprights used shall be supported or secured to prevent accidental dislodgement.

§ 1918.36 Weather deck rails.

Removable weather deck rails shall be kept in place except when cargo operations require them to be removed, in which case they shall be replaced as soon as such cargo operations are completed.

§ 1918.37 Barges.

(a) Walking shall be prohibited along the sides of covered lighters or barges with coamings or cargo more than five feet (1.5 m) high unless a three-foot (.91 m) clear walkway or a grab rail or taut handline is provided.

(b) Walking or working shall be prohibited on the decks of barges to be

loaded unless the walking or working surfaces have been determined by visual inspection to be structurally sound and maintained properly. If, while discharging a barge, an unsound deck surface is discovered, work shall be discontinued and shall not be resumed until means have been taken to ensure a safe work surface.

Subpart E—Opening and Closing Hatches

§ 1918.41 Coaming clearances.

(a) *Weather decks.* If a deck load (such as lumber or other smooth sided deck cargo) more than five feet (1.5 m) high is stowed within three feet (.91 m) of the hatch coaming and employees handling hatch beams and hatch covers are not protected by a coaming at least 24-inch (.61 m) high, a taut handline shall be provided along the side of the deckload. The requirements of § 1918.35 are not intended to apply in this situation.

(b) *Intermediate decks.* (1) There shall be a three-foot (.91 m) working space between the stowed cargo and the coaming at both sides and at one end of the hatches with athwartship hatch beams, and at both ends of those hatches with fore and aft hatch beams, before intermediate deck hatch covers and hatch beams are removed or replaced. Exception: The three-foot (.91 m) clearance is not required on the covered portion of a partially open hatch, nor is it required when lower decks have been filled to hatch beam height with cargo of such a nature as to provide a safe surface upon which employees may work.

(2) For purposes of paragraph (b)(1) of this section, fitted gratings that are in good condition shall be considered a part of the decking when properly placed within the three-foot (.91 m) area.

(c) Grab rails or taut handlines shall be provided for the protection of employees handling hatch beams and hatch covers, when bulkheads, lockers, reefer compartments or large spare parts are within three feet (.91 m) of the coaming.

(d) The clearances in this section do not apply to hatches opened or closed solely by hydraulic or other mechanical means; except that, in all cases in which the three-foot (.91 m) clearance does not exist, cargo that is stowed within three feet (.91 m) of the edge of the hatch shall be adequately secured to prevent cargo from falling into the hold.

§ 1918.42 Hatch beam and pontoon bridles.

(a) Hatch beam and pontoon bridles shall be:

(1) Long enough to reach the holes, rings, or other lifting attachments on the hatch beams and pontoons easily;

(2) Of adequate strength to lift the load safely; and

(3) Properly maintained, including covering or blunting of protruding ends in wire rope splices.

(b) Bridles for lifting hatch beams shall be equipped with toggles, shackles, or hooks, or other devices of such design that they cannot become accidentally dislodged from the hatch beams with which they are used. Hooks other than those described in this section may be used only when they are hooked into the standing part of the bridle. Toggles, when used, shall be at least one inch (2.5 cm) longer than twice the largest diameter of the holes into which they are placed.

(c) Bridles used for lifting pontoons and plugs shall have the number of legs required by the design of the pontoon or plug, and all of which shall be used. Where any use of a bridle requires fewer than the number of legs provided, idle legs shall be hung on the hook or ring, or otherwise prevented from swinging free.

(d) At least two legs of all strongback and pontoon bridles shall be equipped with a lanyard at least eight feet (2.4 m) long and in good condition. The bridle end of the lanyard shall be of chain or wire.

§ 1918.43 Handling hatch beams and covers.

Paragraphs (f)(2), (g), and (h) of this section apply only to folding, sliding, or hinged metal hatch covers or to those hatch covers handled by cranes.

(a) (1) When hatch covers or pontoons are stowed on the weather deck abreast of hatches, they shall be arranged in stable piles not closer to the hatch coaming than three feet (.91 m). Exception: On the working side of the hatch, hatch covers or pontoons may be spread one high between the coaming and bulwark with no space between them, provided the height of the hatch coaming is no less than 24 inches (.61 m). Under no circumstances shall hatch covers or pontoons be stacked higher than the hatch coaming or bulwark on the working side of the hatch.

(2) On seagoing vessels, hatch boards or similar covers removed from the hatch beams in a section of partially opened hatch during cargo handling, cleaning or other operations shall not be stowed on the boards or covers left in place within that section.

(b) Hatch beams shall be laid on their sides, or stood on an edge close together and lashed. Exception: This paragraph (b) shall not apply in cases where hatch beams are of such design that:

(1) The width of the flange is 50 percent or more of the height of the web; and

(2) The flange rests flat on the deck when the hatch beam is stood upright.

(c) Strongbacks, hatch covers, and pontoons removed from hatch openings and placed on the weather deck shall not obstruct clear fore-and-aft or coaming-to-bulwark passageways and shall be lashed or otherwise secured to prevent accidental dislodgement. Dunnage or other suitable material shall be used under and between tiers of strongbacks and pontoons to prevent them from sliding when stowed on steel decks.

(d) Hatch covers unshipped in an intermediate deck shall be placed at least three feet (.91 m) from the coaming or they shall be removed to another deck. Strongbacks unshipped in an intermediate deck shall not be placed closer than six inches (15.2 cm) from the coaming and, if placed closer than three feet (.91 m), shall be secured so that they cannot be tipped or dragged into a lower compartment. If such placement or securement is not possible, strongbacks shall be removed to another deck.

(e) Any hatch beam or pontoon left in place next to an open hatch section being worked shall be locked or otherwise secured, so that it cannot be accidentally displaced. All portable, manually handled hatch covers, including those bound together to make a larger cover, shall be removed from any working section, and adjacent sections, unless securely lashed.

(f)(1) The roller hatch beam at the edge of the open section of the hatch shall be lashed or pinned back so that it cannot be moved toward the open section.

(2) Rolling, sectional or telescopic hatch covers of barges that open in a fore and aft direction shall be secured against unintentional movement while in the open position.

(g) Hinged or folding hatch covers normally stowed in an approximately vertical position shall be positively secured when in the upright position, unless the design of the system otherwise prevents unintentional movement.

(h) Hatches shall not be opened or closed while employees are in the square of the hatch below.

(i) All materials such as dunnage, lashings, twist locks, or stacking cones shall be removed from the hatch cover or be secured to prevent them from falling off the cover before the hatch cover is moved.

(j) When a hatch is to be covered, hatch covers or night tents shall be used. Any covering that only partially covers the hatch, such as alternate hatch covers or strips of dunnage, shall not be covered by a tarpaulin. Exception: A tarpaulin may be used to cover an open or partially open hatch to reduce dust emissions during bulk cargo loading operations, if positive means are taken to prevent employees from walking on the tarpaulin.

Subpart F—Vessel's Cargo Handling Gear

§ 1918.51 General requirements (See also § 1918.11 and Appendix III of this part).

(a) The safe working load specified in the cargo gear certification papers or marked on the booms shall not be exceeded. Any limitations imposed by the certificating authority shall be followed.

(b) All components of cargo handling gear, including tent gantlines and associated rigging, shall be inspected by the employer or a designated person before each use and at appropriate intervals during use. Any gear that is found unsafe shall not be used until it is made safe.

(c) The employer shall determine the load ratings shown on the vessel's wire rope certificates for all wire rope and wire rope slings comprising part of ship's gear and shall observe these load ratings.

(d) The following limitations shall apply to the use of wire rope as a part of the ship's cargo handling gear:

(1) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections that the employer demonstrates will provide the same level of safety may be used;

(2) Except for eye splices in the ends of wires, each wire rope used in hoisting or lowering, in guying derricks, or as a topping lift, preventer, segment of a multi-part preventer, or pendant, shall consist of one continuous piece without knot or splice; and

(3) Wire rope or wire rope slings exhibiting any of the defects or conditions specified in § 1918.62(b)(4) (i) through (vi) shall not be used.

(e) Natural and synthetic fiber rope slings exhibiting any of the defects or conditions specified in § 1918.62(e) (1) through (7) shall not be used.

(f) Synthetic web slings exhibiting any of the defects or conditions specified in § 1918.62(g)(2) (i) through (v) shall not be used.

(g) Chains, including slings, exhibiting any of the defects or conditions specified in § 1918.62 (h)(3) (iii), (iv), or (h)(6) shall not be used.

§ 1918.52 Specific requirements.

(a) *Preventers.* (1) When preventers are used they shall be of sufficient strength for the intended purpose. They shall be secured to the head of the boom independent of working guys unless, for cast fittings, the strength of the fitting exceeds the total strength of all lines secured to it. Any tails, fittings, or other means of making the preventers fast on the deck shall provide strength equal to that of the preventer itself.

(2) Wire rope clips or knots shall not be used to form eyes in, nor to join sections of, preventer guys.

(b) *Stoppers.* (1) Chain topping lift stoppers shall be in good condition, equipped with fiber tails, and long enough to allow not fewer than three half-hitches in the chain.

(2) Chain stoppers shall be shackled or otherwise secured so that their links are not bent by being passed around fittings. The point of attachment shall be of sufficient strength and so placed that the stoppers are in line with the normal topping lift lead at the time the stopper is applied.

(3) Patent stoppers of the clamp type shall be appropriate for the size of the rope used. Clamps shall be in good condition and free of any substance that would prevent their being drawn tight.

(c) *Falls.* (1) The end of the winch fall shall be secured to the drum by clamps, U-bolts, shackles, or other equally strong methods. Fiber rope fastenings shall not be used.

(2) Winch falls shall not be used with fewer than three turns on the winch drum.

(3) Eyes in the ends of wire rope cargo falls shall not be formed by knots and, in single part falls, shall not be formed by wire rope clips.

(4) When the design of the winch permits, the fall shall be wound on the drum so that the cargo hook rises when the winch control lever is pulled back and lowers when the lever is pushed forward.

(d) *Heel blocks.* (1) When an employee works in the bight formed by the heel block, a preventer at least three-quarters of an inch (1.9 cm) diameter wire rope shall be securely rigged, or equally effective means shall be taken, to hold the block and fall if the heel block attachments fail. Where physical limitations prohibit the fitting of a wire rope preventer of the required size, two turns of a one-half inch (1.3 cm) diameter wire rope shall be sufficient.

(2) If the heel block is not so rigged as to prevent its falling when not under strain, it shall be secured to prevent alternate raising and dropping of the block. This requirement shall not apply when the heel block is at least 10 feet (3.0 m) above the deck when at its lowest point.

(e) *Coaming rollers.* Portable coaming rollers shall be secured by wire preventers in addition to the regular coaming clamps.

(f) *Cargo hooks.* Cargo hooks shall be as close to the junction of the falls as the assembly permits, but never farther than two feet (.61 m) from it. Exception: This provision shall not apply when the construction of the vessel and the operation in progress are such that fall angles are greater than 120 degrees. Overhaul chains shall not be shortened by bolting or knotting.

§ 1918.53 Cargo winches.

(a) Moving parts of winches and other deck machinery shall be guarded.

(b) Winches shall not be used if control levers operate with excessive friction or excessive play.

(c) Double gear winches or other winches equipped with a clutch shall not be used unless a positive means of locking the gear shift is provided.

(d) There shall be no load other than the fall and cargo hook assembly on the winch when changing gears on a two-gear winch.

(e) Any defect or malfunction of winches that could endanger employees shall be reported immediately to the officer in charge of the vessel, and the winch shall not be used until the defect or malfunction is corrected.

(f) Temporary seats and shelters for winch drivers that create a hazard to the winch operator or other employees shall not be used.

(g) Except for short handles on wheel type controls, winch drivers shall not be permitted to use winch control extension levers unless they are provided by either the ship or the employer. Such levers shall be of adequate strength and securely fastened with metal connections at the fulcrum and at the permanent control lever.

(h) Extension control levers that tend to fall due to their own weight shall be counterbalanced.

(i) Winch brakes shall be monitored during use. If winch brakes are unable to hold the load, the winch shall be removed from service.

(j) Winches shall not be used when one or more control points, either hoisting or lowering, are not operating properly. Only authorized personnel shall adjust control systems.

(k) When winches are left unattended, control levers shall be placed in the neutral position and the power shall be shut off or control levers shall be locked at the winch or the operating controls.

§ 1918.54 Rigging gear.

(a) *Guy and preventer placement.* Each guy or preventer shall be placed to prevent it from making contact with any other guy, preventer, or stay.

(b) *Guys.* When alternate positions for securing guys are provided, the guys shall be so placed as to produce a minimum stress and not permit the boom to jackknife.

(c) *Boom placement.* The head of the midship boom shall be spotted no farther outboard of the coaming than is necessary for control of the load.

(d) *Preventers.* (1) Preventers shall be properly secured to suitable fittings other than those to which the guys are secured, and shall be as nearly parallel to the guys as the fittings will permit.

(2) Unless the cleat is also a chock and the hauling part is led through the chock opening, the leads of preventers to cleats shall be such that the direction of the line pull of the preventer is as parallel as possible to the plane of the surface on which the cleat is mounted.

(3) Guys and associated preventers shall be adjusted to share the load as equally as possible where cargo operations are being conducted by burtoning. Exception: Where guys are designed and intended for trimming purposes only, and the preventer is intended to do the function of the guy, the guy may be left slack.

(e) *Cargo falls.* Cargo falls under load shall not be permitted to chafe on any standing or other running rigging. Exception: Rigging shall not be construed to mean hatch coamings or other similar structural parts of the vessel.

(f) *Bull wire.* (1) Where a bull wire is taken to a gypsy head for lowering or topping a boom, the bull wire shall be secured to the gypsy head by shackle or other equally strong method. Securing by fiber rope fastening does not meet this requirement.

(2) When, in lowering or topping a boom, it is not possible to secure the bull wire to the gypsy head, or when the topping lift itself is taken to the gypsy head, at least five turns of wire shall be used.

(g) *Trimming and deckloads.* When deck loads extend above the rail and there is less than 12 inches (30.48 cm) horizontal clearance between the edge of the deck load and the inside of the bulwark or rail, a pendant or other alternate device shall be provided to allow trimming of the gear and to prevent employees from going over the side.

§ 1918.55 Cranes (See also § 1918.11).

The following requirements shall apply to the use of cranes forming part of a vessel's permanent equipment.

(a) *Defects.* Cranes with a visible or known defect that affects safe operation shall not be used. Defects shall be reported immediately to the officer in charge of the vessel.

(b) *Operator's station.* (1) Cranes with missing, broken, cracked, scratched, or dirty glass (or equivalent) that impairs operator visibility shall not be used.

(2) Clothing, tools and equipment shall be stored so as not to interfere with access, operation or the operator's view.

(c) *Cargo operations.* (1) Accessible areas within the swing radius of the body of a revolving crane or within the travel of a shipboard gantry crane shall be physically guarded or other equally effective means shall be taken during operations to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane. Verbal warnings to employees to avoid the dangerous area do not meet this requirement.

(2) Limit switch bypass systems shall be secured during all cargo operations. Such bypass systems shall not be used except in an emergency or during non-cargo handling operations such as stowing cranes or derricks or performing repairs. Any time a bypass system is used, it shall be done only under the direction of an officer of the vessel.

(3) Under all operating conditions, at least three full turns of rope shall remain on ungrooved drums, and two full turns on grooved drums.

(4) Crane brakes shall be monitored during use. If crane brakes are unable to hold the load, the crane shall not be used.

(5) Cranes shall not be used if control levers operate with excessive friction or excessive play.

(6) When cranes are equipped with power down capability, there shall be no free fall of the gear when a load is attached.

(7) When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the gear and movements to be made.

(d) *Unattended cranes.* When cranes are left unattended between work periods, § 1918.66(b) (4)(i) through (v) shall apply.

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

§ 1918.61 General (See also Appendix IV of this part).

(a) *Employer provided gear inspection.* All gear and equipment provided by the employer shall be inspected by the employer or designated person before each use and, when appropriate, at intervals during its use, to ensure that it is safe. Any gear that is found upon such inspection to be unsafe shall not be used until it is made safe.

(b) *Safe working load.* (1) The safe working load of gear as specified in §§ 1918.61 through 1918.66 shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than five short tons (10,000 lbs. or 4.5 metric tons) shall have its safe working load plainly marked on it.

(c) *Gear weight markings.* The weight shall be plainly marked on any article of stevedoring gear hoisted by ship's gear and weighing more than 2,000 lbs. (.91 metric tons).

(d) *Certification.* The employer shall not use any material handling device listed in paragraphs (f) and (g) of this section until the device has been certificated, as evidenced by current and valid documents attesting to compliance with the requirements of paragraph (e) of this section.

(e) *Certification procedures.* Each certification required by this section shall be performed in accordance with part 1919 of this chapter, by a person then currently accredited by OSHA as provided in that part.

(f) *Special gear.* (1) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, and that has a Safe Working Load (SWL) greater than five short tons (10,000 lbs or 4.5 metric tons) shall be inspected and tested as a unit before initial use (see Table A).

(2) Special stevedoring gear provided by the employer that has a SWL of five short tons (10,000 or 4.5 metric tons) or less shall be inspected and tested as a unit before initial use according to paragraphs (d) and (e) of this section or by a designated person (see Table A).

TABLE A

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons)	25 percent in excess.

TABLE A—Continued

Safe working load	Proof load
From 20 through 50 short tons (18.1 to 45.3 metric tons)	5 short tons in excess.
Over 50 short tons (45.3 metric tons)	10 percent in excess.

(g) Every spreader that is not a part of ship's gear and is used for handling intermodal containers shall be inspected and tested before initial use to a proof load equal to 25 percent greater than its rated capacity. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(h) All cargo handling gear covered by this section with a SWL greater than five short tons (10,000 lbs. or 4.5 metric tons) shall be proof load tested according to Table A in paragraph (f) or paragraph (g), as applicable, of this section every four years and in accordance with paragraphs (d) and (e) of this section or by a designated person.

(i) Certificates and inspection and test records attesting to the tests required by this section shall be available for inspection.

§ 1918.62 Miscellaneous auxiliary gear.

(a) *Routine inspection.* (1) At the completion of each use, loose gear such as slings, chains, bridles, blocks and hooks shall be so placed as to avoid damage to the gear. Loose gear shall be inspected and any defects corrected before reuse.

(2) Defective gear, as defined by the manufacturers' specifications (when available), shall not be used. Distorted hooks, shackles or similar gear shall be discarded.

Note to paragraph (a): When manufacturers' specifications are not available to determine whether gear is defective, the employer shall use the appropriate paragraphs of this section to make these determinations.

(b) *Wire rope and wire rope slings.* (1) The employer shall follow the manufacturers' recommended ratings for wire rope and wire rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, the employer shall use the tables for wire rope and wire rope slings found in Appendix II to this part. A design safety factor of at least five shall be maintained for the common sizes of running wire used as falls in purchases, or in such uses as light load slings.

(2) Wire rope with a safety factor of less than five may be used only as follows:

(i) In specialized equipment, such as cranes, designed to be used with lesser wire rope safety factors;

(ii) According to design factors in standing rigging applications; or

(iii) For heavy lifts or other purposes for which a safety factor of five is not feasible and for which the employer can show that equivalent safety is ensured.

(3) Wire rope or wire rope slings provided by the employer and having any of the following conditions shall not be used:

(i) Ten randomly distributed broken wires in one rope lay or three or more broken wires in one strand in one rope lay;

(ii) Kinking, crushing, bird caging or other damage resulting in distortion of the wire rope structure;

(iii) Evidence of heat damage;

(iv) Excessive wear or corrosion, deformation or other defect in the wire or attachments, including cracks in attachments;

(v) Any indication of strand or wire slippage in end attachments; or

(vi) More than one broken wire close to a socket or swaged fitting.

(4) Protruding ends of strands in splices on slings and bridles shall be covered or blunted. Coverings shall be removable so that splices can be examined. Means used to cover or blunt ends shall not damage the wire.

(5) Where wire rope clips are used to form eyes, the employer shall follow the manufacturers' recommendations, which shall be available for inspection. If ''U'' bolt clips are used and the manufacturers' recommendations are not available, Table 1 of Appendix II to this part shall be used to determine the number and spacing of clips. ''U'' bolts shall be applied with the ''U'' section in contact with the dead end of the rope.

(6) Wire rope shall not be secured by knotting.

(7) Eyes in wire rope bridles, slings, bull wires, or in single parts used for hoisting shall not be formed by wire rope clips or knots.

(8) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope, and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections that the employer demonstrates to be equivalently safe may be used.

(9) Except for eye splices in the ends of wires and endless rope slings, each wire rope used in hoisting or lowering, or bulling cargo, shall consist of one continuous piece without knot or splice.

(c) *Natural fiber rope.* (1) The employer shall follow the manufacturers' recommended ratings for natural fiber rope and natural fiber rope slings provided for use aboard ship, and shall have such ratings available for inspection.

(2) If the manufacturers' recommended ratings and use recommendations are unavailable, the employer shall use Table 2 of Appendix II to this part to determine safe working loads of natural fiber rope slings comprising part of pre-slung drafts.

(3) Eye splices shall consist of at least three full tucks. Short splices shall consist of at least six tucks, three on each side of the centerline.

(d) *Synthetic rope.* (1) The employer shall follow the manufacturers' ratings and use recommendations for the specific synthetic fiber rope and synthetic fiber rope slings provided for use aboard ship, and shall have such ratings available for inspection.

(2) If the manufacturers' recommended ratings and use recommendations are unavailable, Tables 3A and B of Appendix II to this part shall be used to determine the safe working load of synthetic fiber rope and of synthetic rope slings that comprise this part of pre-slung drafts.

(3) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for natural fiber ropes of less than three inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for natural fiber rope of three inches (7.62 cm) or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C=\sqrt{0.6C_s^2+0.4C_m^2}$$

Where C=the required circumference of the synthetic rope in inches (centimeters); C_s=the circumference to the nearest one-quarter inch (.6 cm) of a synthetic rope having a breaking strength no less than that of the natural rope that is required by paragraph (c) of this section; and C_m=the circumference of the natural rope in inches (centimeters) that is required by paragraph (c) of this

section. In making each substitution, the employer shall ascertain that the inherent characteristics of the synthetic fiber are suitable for hoisting.

(e) *Removal of natural and synthetic rope from service.* Natural and synthetic rope having any of the following defects shall be removed from service:

(1) Abnormal or excessive wear including heat and chemical damage;

(2) Powdered fiber between strands;

(3) Sufficient cut or broken fibers to affect the capability of the rope;

(4) Variations in the size or roundness of strands;

(5) Discolorations other than stains not associated with rope damage;

(6) Rotting; or

(7) Distortion or other damage to attached hardware.

(f) *Thimbles.* Properly fitting thimbles shall be used when any rope is secured permanently to a ring, shackle or attachment, where practicable.

(g) *Synthetic web slings.* (1) Slings and nets or other combinations of more than one piece of synthetic webbing assembled and used as a single unit (synthetic web slings) shall not be used to hoist loads greater than the sling's rated capacity.

(2) Synthetic web slings shall be removed from service if they exhibit any of the following defects:

(i) Acid or caustic burns;

(ii) Melting or charring of any part of the sling surface;

(iii) Snags, punctures, tears or cuts;

(iv) Broken or worn stitches;

(v) Distortion or damage to fittings; or

(vi) Display of visible warning threads or markers designed to indicate excessive wear or damage.

(3) Defective synthetic web slings removed from service shall not be returned to service unless repaired by a sling manufacturer or an entity of similar competence. Each repaired sling shall be proof tested by the repairer to twice the sling's rated capacity before its return to service. The employer shall retain a certificate of the proof test and make it available for inspection.

(4) Synthetic web slings provided by the employer shall only be used according to the manufacturers' use recommendations, which shall be available.

(5) Fittings shall have a breaking strength at least equal to that of the sling to which they are attached and shall be free of sharp edges.

(h) *Chains and chain slings used for hoisting.* (1) The employer shall follow the manufacturers' recommended ratings for safe working loads for the size of wrought iron and alloy steel chains and chain slings and shall have such ratings available for inspection. When the manufacturer does not provide such ratings, the employer shall use Table 4A of Appendix II to this part to determine safe working loads for alloy steel chains and chain slings only.

(2) Proof coil steel chain, also known as common or hardware chain, and other chain not recommended by the manufacturer for slinging or hoisting shall not be used for slinging or hoisting.

(3)(i) Sling chains, including end fastenings, shall be inspected for visible defects before each day's use and as often as necessary during use to ensure integrity of the sling.

(ii) Thorough inspections of chains in use shall be made quarterly to detect wear, defective welds, deformation or increase in length or stretch. The month of inspection shall be shown on each chain by color of paint on a link or by other equally effective means.

(iii) Chains shall be removed from service when maximum allowable wear, as indicated in Table 4B of Appendix II to this part, is reached at any point of a link.

(iv) Chain slings shall be removed from service when stretch has increased the length of a measured section by more than 5 percent; when a link is bent, twisted or otherwise damaged; or when a link has a raised scarf or defective weld.

(v) Only designated persons shall inspect chains used for slinging and hoisting.

(4) Chains shall only be repaired by a designated person. Links or portions of a chain defective under any of the criteria of paragraph (h)(3)(iv) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof test load recommended by the manufacturer for the original chain. Tests shall be done by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5)(i) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

(ii) Any part of a lifting appliance or item of loose gear installed after January 21, 1998 shall not be manufactured of wrought iron.

(6) Kinked or knotted chains shall not be used for lifting. Chains shall not be shortened by bolting, wiring or knotting. Makeshift links or fasteners such as wire, bolts or rods shall not be used.

(7) Hooks, rings, links and attachments affixed to sling chains shall have rated capacities at least equal to those of the chains to which they are attached.

(8) Chain slings shall bear identification of size, grade and rated capacity.

(i) *Shackles.* (1) If the manufacturers' recommended safe working loads for shackles are available, they shall not be exceeded. If the manufacturers' recommendations are not available, Table 5 of Appendix II to this part shall apply.

(2) Screw pin shackles provided by the employer and used aloft shall have their pins positively secured.

(j) *Hooks other than hand hooks.* (1) The manufacturers' recommended safe working loads for hooks shall not be exceeded. Hooks other than hand hooks shall be tested according to the provisions of paragraphs (a), (c) and (d) of § 1919.31 of this chapter.

(2) Bent or sprung hooks shall be discarded.

(3) Teeth of case hooks shall be maintained in safe condition.

(4) Jaws of patent clamp-type plate hooks shall be maintained in condition to grip plates securely.

(5) Loads shall be applied to the throat of the hook only.

(k) *Pallets.* (1) Pallets shall be made and maintained to support and carry loads being handled safely. Fastenings of reusable pallets used for hoisting shall be bolts and nuts, drive screws (helically threaded nails), annular threaded nails or fastenings of equivalent holding strength.

(2) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least three inches (7.6 cm). They shall not be hoisted by wire slings alone.

(3) Loaded pallets that do not meet the requirements of this paragraph shall be hoisted only after being placed on pallets meeting such requirements, or shall be handled by other means providing equivalent safety.

(4) Bridles for handling flush end or box-type pallets shall be designed to prevent disengagement from the pallet under load.

(5) Pallets shall be stacked or placed to prevent falling, collapsing or otherwise causing a hazard under standard operating conditions.

(6) Disposable pallets intended only for one use shall not be reused for hoisting.

§ 1918.63 Chutes, gravity conveyors and rollers.

(a) Chutes shall be of adequate length and strength to support the conditions of use, and shall be free of splinters and sharp edges.

(b) When necessary for the safety of employees, chutes shall be equipped with sideboards to afford protection from falling objects.

(c) When necessary for the safety of employees, provisions shall be made for stopping objects other than bulk commodities at the delivery end of the chute.

(d) Chutes and gravity conveyor roller sections shall be firmly placed and secured to prevent displacement, shifting, or falling.

(e) Gravity conveyors shall be of sufficient strength to support the weight of materials placed upon them safely. Conveyor rollers shall be installed in a way that prevents them from falling or jumping out of the frame.

(f) Frames shall be kept free of burrs and sharp edges.

§ 1918.64 Powered conveyors.

(a) *Emergency stop.* Readily accessible stop controls shall be provided for use in an emergency. Whenever the operation of any power conveyor requires personnel to work close to the conveyor, the conveyor controls shall not be left unattended while the conveyor is in operation.

(b) *Guarding.* All conveyor and trimmer drives that create a hazard shall be adequately guarded.

(c) *Approved for location.* Electric motors and controls on conveyors and trimmers used to handle grain and exposed to grain dust shall be of a type approved by a nationally recognized testing laboratory for use in Class II, Division I locations. (See § 1910.7 of this chapter.)

(d) *Grain trimmer control box.* Each grain trimmer shall have a control box on the weather deck close to the spout feeding the trimmer.

(e) *Grain trimmer power cable.* Power cables between the deck control box and the grain trimmer shall be used only in continuous lengths without splice or tap between connections.

(f) *Portable conveyors.* Portable conveyors shall be stable within their operating ranges. When used at variable fixed levels, the unit shall be secured at the operating level.

(g) *Delivery and braking.* When necessary for the safety of employees, provisions shall be made for braking objects at the delivery end of the conveyor.

(h) *Electric brakes.* Conveyors using electrically released brakes shall be constructed so that the brakes cannot be released until power is applied and the brakes are automatically engaged if the power fails or the operating control is returned to the ''stop'' position.

(i) *Starting powered conveyors.* Powered conveyors shall not be started until all employees are clear of the conveyor or have been warned that the conveyor is about to start up.

(j) *Loading and unloading.* The area around conveyor loading and unloading points shall be kept clear of obstructions during conveyor operations.

(k) *Lockout/tagout.* (1) Conveyors shall be stopped and their power sources locked out and tagged out during maintenance, repair, and servicing. If power is necessary for testing or for making minor adjustments, power shall only be supplied to the servicing operation.

(2) The starting device shall be locked out and tagged out in the stop position before an attempt is made to remove the cause of a jam or overload of the conveying medium.

(l) *Safe practices.* (1) Only designated persons shall operate, repair or service powered conveyors.

(2) The employer shall ensure that each employee stays off operating conveyors.

(3) Conveyors shall be operated only with all overload devices, guards and safety devices in place and operable.

§ 1918.65 Mechanically powered vehicles used aboard vessels.

(a) *Applicability.* This section applies to every type of mechanically powered vehicle used for material or equipment handling aboard a vessel.

(b) *General.* (1) Modifications, such as adding counterweights that might affect the vehicle's capacity or safety, shall not be done without either the manufacturers' prior written approval or the written approval of a registered professional engineer experienced with the equipment, who has consulted with the manufacturer, if available. Capacity, operation and maintenance instruction plates, tags or decals shall be changed to conform to the equipment as modified.

(2) Rated capacities, with and without removable counterweights, shall not be exceeded. Rated capacities shall be marked on the vehicle and shall be visible to the operator. The vehicle weight, with and without a counterweight, shall be similarly marked.

(3) If loads are lifted by two or more trucks working in unison, the total weight shall not exceed the combined safe lifting capacity of all trucks.

(c) *Guards for fork lift trucks.* (1) Except as noted in paragraph (c)(5) of this section, fork lift trucks shall be equipped with overhead guards securely attached to the machines. The guard shall be of such design and construction as to protect the operator from boxes, cartons, packages, bagged material, and other similar items of cargo that might fall from the load being handled or from stowage.

(2) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed six inches (15.2 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled through the guard.

(3) Overhead guards shall be built so that failure of the vehicle's mast tilting mechanism will not displace the guard.

(4) Overhead guards shall be large enough to extend over the operator during all truck operations, including forward tilt.

(5) An overhead guard may be removed only when it would prevent a truck from entering a work space and only if the operator is not exposed to low overhead obstructions in the work space.

(6) Where necessary to protect the operator, fork lift trucks shall be fitted with a vertical load backrest extension to prevent the load from hitting the mast when the mast is positioned at maximum backward tilt. For this purpose, a ''load backrest extension'' means a device extending vertically from the fork carriage frame to prevent raised loads from falling backward.

(d) *Guards for bulk cargo-moving vehicles.* (1) Every crawler type, rider operated, bulk cargo-moving vehicle shall be equipped with an operator's guard of such design and construction as to protect the operator, when seated, against injury from contact with a projecting overhead hazard.

(2) Overhead guards and their attachment points shall be so designed as to be able to withstand, without excessive deflection, a load applied horizontally at the operator's shoulder level equal to the drawbar pull of the machine.

(3) Overhead guards are not required when the vehicle is used in situations in which the seated operator cannot contact projecting overhead hazards.

(4) After July 26, 1999, bulk cargo-moving vehicles shall be equipped with rollover protection of such design and construction as to prevent the possibility of the operator being crushed because of a rollover or upset.

(e) *Approved trucks.* (1) ''Approved power-operated industrial truck'' means one listed as approved for the intended use or location by a nationally

recognized testing laboratory (see § 1910.7 of this chapter).

(2) Approved power-operated industrial trucks shall bear a label or other identification indicating testing laboratory approval.

(3) When the atmosphere in an area is hazardous (see § 1918.2 and § 1918.93), only approved power-operated industrial trucks shall be used.

(f) *Maintenance.* (1) Mechanically powered vehicles shall be maintained in safe working order. Safety devices shall not be removed or made inoperative except where permitted in this section. Vehicles with a fuel system leak or any other safety defect shall not be operated.

(2) Braking systems or other mechanisms used for braking shall be operable and in safe condition.

(3) Replacement parts whose function might affect operational safety shall be equivalent in strength and performance capability to the original parts that they replace.

(4) Repairs to the fuel and ignition systems of mechanically powered vehicles that involve fire hazards shall be conducted only in locations designated as safe for such repairs.

(5) Batteries on all mechanically powered vehicles shall be disconnected during repairs to the primary electrical system except when power is necessary for testing and repair. On vehicles equipped with systems capable of storing residual energy, that energy shall be safely discharged before work on the primary electrical system begins.

(6) Only designated persons shall do maintenance and repair.

(g) *Parking brakes.* All mechanically powered vehicles purchased after January 21, 1998, shall be equipped with parking brakes.

(h) *Operation.* (1) Only stable and safely arranged loads within the rated capacity of the mechanically powered vehicle shall be handled.

(2) The employer shall require drivers to ascend and descend grades slowly.

(3) If the load obstructs the forward view, the employer shall require drivers to travel with the load trailing.

(4) Steering knobs shall not be used unless the vehicle is equipped with power steering.

(5) When mechanically powered vehicles use cargo lifting devices that have a means of engagement hidden from the operator, a means shall be provided to enable the operator to determine that the cargo has been engaged.

(6) No load on a mechanically powered vehicle shall be suspended or swung over any employee.

(7) When mechanically powered vehicles are used, provisions shall be made to ensure that the working surface can support the vehicle and load, and that hatch covers, truck plates, or other temporary surfaces cannot be dislodged by movement of the vehicle.

(8) When mechanically powered vehicles are left unattended, load-engaging means shall be fully lowered, controls neutralized, brakes set and power shut off. Wheels shall be blocked or curbed if the vehicle is on an incline.

(9) When lift trucks or other mechanically powered vehicles are being operated on open deck-type barges, the edges of the barges shall be guarded by railings, sideboards, timbers, or other means sufficient to prevent vehicles from rolling overboard. When such vehicles are operated on covered lighters where door openings other than those being used are left open, means shall be provided to prevent vehicles from rolling overboard through such openings.

(10) Unauthorized personnel shall not ride on mechanically powered vehicles. A safe place to ride shall be provided when riding is authorized.

(11) An employee may be elevated by fork lift trucks only when a platform is secured to the lifting carriage or forks. The platform shall meet the following requirements:

(i) The platform shall have a railing complying with § 1917.112(c) of this chapter.

(ii) The platform shall have toeboards complying with § 1917.112(d) of this chapter, if tools or other objects could fall on employees below.

(iii) When the truck has controls elevated with the lifting carriage, means shall be provided for employees on the platform to shut off power to the vehicle.

(iv) Employees on the platform shall be protected from exposure to moving truck parts.

(v) The platform floor shall be skid resistant.

(vi) An employee shall be at the truck's controls whenever employees are elevated.

(vii) While an employee is elevated, the truck may be moved only to make minor adjustments in placement.

§ 1918.66 Cranes and derricks other than vessel's gear.

(a) *General.* The following requirements shall apply to the use of cranes and derricks brought aboard vessels for conducting longshoring operations. They shall not apply to cranes and derricks forming part of a vessel's permanent equipment.

(1) *Certification.* Cranes and derricks shall be certificated in accordance with part 1919 of this chapter.

(2) *Posted weight.* The crane weight shall be posted on all cranes hoisted aboard vessels for temporary use.

(3) *Rating chart.* All cranes and derricks having ratings that vary with boom length, radius (outreach) or other variables shall have a durable rating chart visible to the operator, covering the complete range of the manufacturers' (or design) capacity ratings. The rating chart shall include all operating radii (outreach) for all permissible boom lengths and jib lengths, as applicable, with and without outriggers, and alternate ratings for optional equipment affecting such ratings. Precautions or warnings specified by the owner or manufacturer shall be included along with the chart.

(4) *Rated loads.* The manufacturers' (or design) rated loads for the conditions of use shall not be exceeded.

(5) *Change of rated loads.* Designated working loads shall not be increased beyond the manufacturers' ratings or original design limitations unless such increase receives the manufacturers' approval. When the manufacturers' services are not available or where the equipment is of foreign manufacture, engineering design analysis shall be done or approved by a person accredited for certificating the equipment under part 1919 of this chapter. Engineering design analysis shall be done by a registered professional engineer competent in the field of cranes and derricks. Any structural changes required by the change in rating shall be carried out.

(6) *Radius indicator.* When the rated load varies with the boom radius, the crane or derrick shall be fitted with a boom angle or radius indicator visible to the operator.

(7) *Operator's station.* The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent. Cranes with missing, broken, cracked, scratched, or dirty glass (or equivalent), that impairs operator vision shall not be used. Clothing, tools, and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(8) *Counterweights or ballast.* Cranes shall be operated only with the specified type and amount of ballast or counterweights. Ballast or counterweights shall be located and secured only as provided in the manufacturers' or design specifications, which shall be available for inspection.

(9) *Outriggers.* Outriggers shall be used according to the manufacturers' specifications or design data, which

shall be available for inspection. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety, and of sufficient width and length to prevent the crane from shifting or toppling under load.

(10) *Exhaust gases.* Engine exhaust gases shall be discharged away from crane operating personnel.

(11) *Electrical/Guarding.* Electrical equipment shall be so placed or enclosed that live parts will not be exposed to accidental contact. Designated persons may work on energized equipment only if necessary during inspection, maintenance, or repair; otherwise the equipment shall be stopped and its power source locked out and tagged out.

(12) *Fire extinguisher.* (i) At least one portable approved or listed fire extinguisher of at least a 5-B:C rating or equivalent shall be accessible in the cab of the crane or derrick.

(ii) No portable fire extinguisher using carbon tetrachloride or chlorobromomethane extinguishing agents shall be used.

(13) *Rope on drums.* At least three full turns of rope shall remain on ungrooved drums, and two turns on grooved drums, under all operating conditions. Wire rope shall be secured to drums by clamps, U-bolts, shackles or equivalent means. Fiber rope fastenings are prohibited.

(14) *Brakes.* (i) Each independent hoisting unit of a crane shall be equipped with at least one holding brake, applied directly to the motor shaft or gear train.

(ii) Each independent hoisting unit of a crane shall, in addition to the holding brake, be equipped with a controlled braking means to control lowering speeds.

(iii) Holding brakes for hoist units shall have not less than the following percentage of the rated load hoisting torque at the point where the brake is applied:

(A) 125 percent when used with an other than mechanically controlled braking means; or

(B) 100 percent when used with a mechanically controlled braking means.

(iv) All power control braking means shall be capable of maintaining safe lowering speeds of rated loads.

(15) *Operating controls.* Crane and derrick operating controls shall be clearly marked, or a chart showing their function shall be posted at the operator's position.

(16) *Booms.* Cranes with elevatable booms and without operable automatic limiting devices shall be provided with boom stops if boom elevation can exceed maximum design angles from the horizontal.

(17) *Foot pedals.* Foot pedals shall have a non-skid surface.

(18) *Access.* Ladders, stairways, stanchions, grab irons, foot steps or equivalent means shall be provided as necessary to ensure safe access to footwalks, cab platforms, the cab and any portion of the superstructure that employees must reach.

(b) *Operations.* (1) *Use of cranes together.* When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the load and movements to be made.

(2) *Guarding of swing radius.* Accessible areas within the swing radius of the body of a revolving crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure or between parts of the crane.

(3) *Prohibited usage.* (i) Equipment shall not be used in a way that exerts side loading stresses upon the crane or derrick boom.

(ii) No crane or derrick having a visible or known defect that may affect safe operation shall be used.

(4) *Unattended cranes.* The following steps shall be taken before leaving a crane unattended between work periods:

(i) Suspended loads, such as those hoisted by lifting magnets or clamshell buckets, shall be landed unless the storage position or maximum hoisting of the suspended device will provide equivalent safety;

(ii) Clutches shall be disengaged;

(iii) The power supply shall be shut off;

(iv) The crane shall be secured against accidental travel; and

(v) The boom shall be lowered or secured against movement.

(c) *Protection for employees being hoisted.* (1) No employee shall be hoisted by the load hoisting apparatus of a crane or derrick except on a platform meeting the following requirements:

(i) Enclosed by a railing or other means providing protection equivalent to that described in § 1917.112(c) of this chapter;

(ii) Fitted with toe boards if the platform has open railings;

(iii) A safety factor of four based on ultimate strength;

(iv) Bearing a plate or permanent marking indicating maximum load rating, which shall not be exceeded, and the weight of the platform itself;

(v) Equipped with a device to prevent access doors, when used, from opening accidentally;

(vi) Equipped with overhead protection for employees on the platform if they are exposed to falling objects or overhead hazards; and

(vii) Secured to the load line by means other than wedge and socket attachments, unless the free (bitter) end of the line is secured back to itself by a clamp placed as close above the wedge as possible.

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate only in power up and power down, with automatic brake application when not hoisting or lowering.

(3) All cranes and derricks used to hoist personnel shall be equipped with an anti-two-blocking device.

(4) Variable radius booms of a crane or derrick used to hoist personnel shall be so constructed or secured as to prevent accidental boom movement.

(5) Platforms or devices used to hoist employees shall be inspected for defects before each day's use and shall be removed from service if defective.

(6) Employees being hoisted shall remain in continuous sight of and communication with the operator or signalman.

(7) Operators shall remain at the controls when employees are hoisted.

(8) Cranes shall not travel while employees are hoisted, except in emergencies or in normal tier-to-tier transfer of employees during container operations.

(d) *Routine inspection.* (1) Designated persons shall visually inspect each crane and derrick on each day of use for defects in functional operating components and shall report any defect found to the employer. The employer shall inform the operator of the result of the inspection.

(2) A designated person shall thoroughly inspect all functional components and accessible structural features of each crane or device at monthly intervals.

(3) Any defects found during such inspections that may create a safety hazard shall be corrected before further equipment use. Repairs shall be done only by designated persons.

(4) A record of each monthly inspection shall be maintained for six months in or on the crane or derrick or at the terminal.

(e) *Protective devices.* (1) When exposed moving parts such as gears, chains and chain sprockets present a hazard to employees during crane and derrick operations, those parts shall be securely guarded.

(2) Crane hooks shall be latched or otherwise secured to prevent accidental load disengagement.

(f) *Load-indicating devices.* (1) Unless exempted by the provisions of paragraph (f)(1)(viii) of this section, every crane used to load or discharge cargo into or out of a vessel shall be fitted with a load-indicating device or alternative device in proper working condition that shall meet the following criteria:

(i) The type or model of any load-indicating device used shall be such as to provide:

(A) A direct indication in the cab of actual weight hoisted or a means of determining this by reference to crane ratings posted and visible to the operator, except that the use of a dynamometer or simple scale alone will not meet this requirement; or

(B) An automatic weight-moment device (e.g., a computer) providing indications in the cab according to the radius and load at the moment; or

(C) A device that will prevent an overloaded condition.

(ii) The accuracy of the load-indicating device, weight-moment device, or overload protection device shall be such that any indicated load (or limit), including the sum of actual weight hoisted and additional equipment or ''add ons'' such as slings, sensors, blocks, etc., is within the range between 95 percent (5 percent underload) and 110 percent (10 percent overload) of the actual true total load. Such accuracy shall be required over the range of daily operating variables reasonably anticipated under the conditions of use.

(iii) The device shall enable the operator to decide before making any lift that the load indicating device or alternative device is operative. In the alternative, if the device is not so mounted or attached and does not include such means of checking, it shall be certified by the manufacturer to remain operative for a specific time. The device shall be checked for accuracy, using known values of the load, at the time of every certification survey (see § 1918.11) and at such additional times as may be recommended by the manufacturer.

(iv) When the load indicating device or alternative device is so arranged in the supporting system (crane structure) that its failure could cause the load to be dropped, its strength shall not be the limiting factor of the supporting system (crane structure).

(v) Units of measure in pounds or both pounds and kilograms (or other indicators of measurement, such as colored indicator lights), capacity of the indicating system, accuracy of the indicating system, and operating instructions and precautions shall be conspicuously marked. If the system used provides no readout but automatically ceases crane operation when the rated load limit is reached under any specific condition of use, the marking shall provide the make and model of the device installed, a description of what it does, how it is operated, and any necessary precautions regarding the system. All of these markings shall be readily visible to the operator.

(vi) All load indicating devices shall operate over the full operating radius. Overall accuracy shall be based on actual applied loads and not on full scale (full capacity) load.

Note to paragraph (f)(1)(vi): If the accuracy of the load indicating device is based on full scale loads and the device is arbitrarily set at plus or minus 10 percent, it would accept a reading between 90,000 and 110,000 lbs. at full capacity for a machine with a maximum rating of 100,000 lbs. but would also show a reading of between zero and 20,000 lbs. at that outreach (radius) at which the load would be 10,000 lbs.; this is clearly unacceptable. If, however, the accuracy of the device is based on actual applied loads under the same conditions, the acceptable range would remain the same with the 100,000-lb. load but would show a figure between 9,000 and 11,000 lbs. at the 10,000-lb. load; this is an acceptable reading.

(vii) When a load-indicating device uses the radius as a factor in its use or in its operating indications, the indicated radius (which may be in feet and/or meters, or degrees of boom angle, depending on the system used) shall be within the range between 97 percent and 110 percent of the actual (true) radius. When radius is presented in degrees, and feet or meters are required for necessary determinations, a conversion chart shall be provided.

(viii) The load indicating device requirements of this paragraph do not apply to a crane:

(A) Of the trolley equipped bridge type while handling containers known to be and identified as empty, or loaded, and in either case according to the provisions of § 1918.85(b) of this part, or while hoisting other lifts by means of a lifting beam supplied by the crane manufacturer for the purpose and in all cases within the crane rating;

(B) While handling bulk commodities or cargoes by means of clamshell bucket or magnet;

(C) While used to handle or hold hoses in connection with transfer of bulk liquids, or other hose-handled products; or

(D) While the crane is used exclusively to handle cargo or equipment whose total actual gross weight is marked on the unit or units hoisted, and the total actual gross weight never exceeds 11,200 lbs., and the load is less than the rated capacity of the crane at the maximum outreach possible at the time.

(2) [Reserved]

§ 1918.67 Notifying the ship's officers before using certain equipment.

(a) The employer shall notify the officer in charge of the vessel before bringing aboard ship internal combustion or electric powered tools, equipment or vehicles.

(b) The employer shall also notify the officer in charge of the vessel before using the ship's electric power for the operation of any electric tools or equipment.

§ 1918.68 Grounding.

The frames of portable electrical equipment and tools, other than double insulated tools and battery operated tools, shall be grounded through a separate equipment conductor run with or enclosing the circuit conductors.

§ 1918.69 Tools.

(a) *General.* Employers shall not issue or permit the use of visibly unsafe tools.

(b) *Portable electric tools.* (1) Portable hand-held electric tools shall be equipped with switches of a type that must be manually held in position.

(2) All portable, power-driven circular saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the minimum arc required to permit the base to be tilted for bevel cuts. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. When the tool is withdrawn from the work, the lower guard shall automatically and instantly return to the covering position.

§§ 1918.70–.80 [Reserved]

Subpart H—Handling Cargo

§ 1918.81 Slinging.

(a) Drafts shall be safely slung before being hoisted. Loose dunnage or debris hanging or protruding from loads shall be removed.

(b) Cargo handling bridles, such as pallet bridles, which are to remain attached to the hoisting gear while hoisting successive drafts, shall be attached by shackles, or other positive means shall be taken to prevent them from being accidentally disengaged from the cargo hook.

(c) Drafts of lumber, pipe, dunnage and other pieces, the top layer of which is not bound by the sling, shall be slung in a way that prevents sliders. Double slings shall be used on unstrapped dunnage, unless, due to the size of hatch or deep tank openings, using them is impracticable.

(d) Case hooks shall be used only with cases designed to be hoisted by these hooks.

(e) Bales of cotton, wool, cork, wood pulp, gunny bags or similar articles shall not be hoisted by straps unless the straps are strong enough to support the weight of the bale. At least two hooks, each in a separate strap, shall be used.

(f) Unitized loads bound by bands or straps may be hoisted by the banding or strapping only if the banding or strapping is suitable for hoisting and is strong enough to support the weight of the load.

(g) Additional means to maintain the unitized loads during hoisting shall be employed to ensure safe lifting of such loads having damaged banding or strapping.

(h) Loads requiring continuous manual guidance during handling shall be guided by guide ropes (tag lines) that are long enough to control the load.

(i) No draft shall be hoisted unless the winch or crane operator(s) can clearly see the draft itself or see the signals of a signalman who is observing the draft's movement.

(j) Intermodal containers shall be handled in accordance with § 1918.85.

(k) The employer shall require that employees stay clear of the area beneath overhead drafts or descending lifting gear.

(l) The employer shall not permit employees to ride the hook or the load, except as provided for in § 1918.85(g).

§ 1918.82 Building drafts.

(a) Drafts shall be built or means shall be taken to prevent cargo from falling from them.

(b) Buckets and tubs used in handling bulk or frozen cargo shall not be loaded above their rims.

§ 1918.83 Stowed cargo; tiering and breaking down.

(a) When necessary to protect personnel working in a hold, the employer shall secure or block stowed cargo that is likely to shift or roll.

(b) In breaking down stowed cargo, precautions shall be taken to prevent remaining cargo from falling.

(c) Employees trimming bulk cargo shall be checked in and out by the job boss. Before securing any reefer compartment, a check shall be made to ensure that no employee remains inside. Frequent checks shall be made to ensure the safety of any employee working alone in a tank or cargo compartment.

§ 1918.84 Bulling cargo.

(a) Bulling cargo shall be done with the bull line led directly from the heel block. However, bulling may be done from the head of the boom when the nature of the cargo and the surface over which it is dragged are such that the load cannot be stalled, or when the winch actually does not have sufficient strength, with the purchase used, to overload the boom.

(b) Snatch blocks shall be used to provide a fair lead for the bull line to avoid unnecessary dragging of the bull line against coamings and obstructions.

(c) Snatch blocks shall not be used with the point of the hook resting on the flange of a beam, but shall be hung from padeyes, straps, or beam clamps. Snatch blocks or straps shall not be made fast to batten cleats or other insecure fittings.

(d) Beam frame clamps shall be so secured as to prevent their slipping, falling, or being pulled from their stationary attachment.

(e) Falls led from cargo booms of vessels shall not be used to move scows, lighters or railcars.

§ 1918.85 Containerized cargo operations.

(a) *Container markings.* Every intermodal container shall be legibly and permanently marked with:

(1) The weight of the container when empty, in pounds;

(2) The maximum cargo weight the container is designed to carry, in pounds; and

(3) The sum of the weight of the container and the maximum cargo weight, in pounds.

(b) *Container weight.* No container shall be hoisted by any lifting appliance unless the following conditions have been met:

(1) The employer shall determine from the carrier whether a container to be hoisted is loaded or empty. Before loading or discharging, empty containers shall be identified in a manner that will inform every supervisor and job boss on the site and in charge of loading or discharging, or every crane or other hoisting equipment operator and signalman, that such container is empty. Methods of identification may include cargo plans, manifests, or markings on the container.

(2) For a loaded container:

(i) The actual gross weight shall be plainly marked and visible to the crane or other hoisting equipment operator or signalman, or to every supervisor or job boss on site and in charge of the operation; or

(ii) The cargo stowage plan or equivalent permanently recorded display serving the same purpose, containing the actual gross weight and the serial number or other positive identification of that specific container, shall be provided to the crane or other hoisting equipment operator and signalman, and to every supervisor and job boss on site and in charge of the operation.

(3) Every outbound container received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain the actual gross weight, either at the terminal or elsewhere, before being hoisted.

(4)(i) When container weighing scales are found at a marine terminal, any outbound container with a load consolidated at that terminal shall be weighed to obtain the actual weight before being hoisted.

(ii) If the terminal has no scales, the actual gross weight may be calculated from the container's contents and the container's empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation, and the date.

(5) Open top vehicle-carrying containers, and those built specifically and used solely for the carriage of compressed gases, are excepted from paragraphs (b)(3) and (b)(4) of this section.

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section if:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside so that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing, by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is found.

(c) *Overloaded containers.* No container shall be hoisted if its actual gross weight exceeds the weight marked as required in paragraph (a)(3) of this section, or it exceeds the capacity of the lifting appliance.

(d) *Container inspection.* (1) Prior to hoisting, each container shall be inspected for any visible defects in structural members and fittings that would make the handling of such container unsafe.

(2) Any container found to have such a defect shall either be handled by a special means to ensure safe handling or shall be emptied before handling.

(e) *Suspended containers.* The employer shall prohibit employees from working beneath a suspended container.

(f) *Lifting fittings.* Containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (f)(1) through (f)(3) of this section, unless damage to an intermodal container makes special means of handling necessary.

(1) *Loaded intermodal containers.* Loaded intermodal containers of 20 feet (6.1 m) or more shall be hoisted as follows:

(i) When hoisting containers by the top fittings, the lifting forces shall be applied vertically from at least four such fittings. A less than vertical lift is permitted only under the following conditions:

(A) The container being lifted is an ISO ''closed box container'';

(B) The condition of the box is sound;

(C) The speed of hoisting and lowering is moderated when heavily ladened containers [5] are encountered;

(D) The lift angle is at 80 to 90 degrees;

(E) The distance between the lifting beam and the load is at least 8 feet, 2.4 inches (2.5 m); and

(F) The length of the spreader beam is at least 16.3 feet (5 m) for a 20-foot container, and at least 36.4 feet (11 m) for a 40-foot container.

(ii) When hoisting containers from bottom fittings, the hoisting connections shall bear on the fittings only, making no other contact with the container. The angles of the four bridle legs shall not be less than 30 degrees to the horizontal for 40-foot (12.2 m) containers; 37 degrees for 30-foot (9.1 m) containers; and 45 degrees for 20-foot (6.1 m) containers.

(iii) Lifting containers by fork lift trucks or grappling arms from above or from one side may be done only if the container is designed for this type of handling.

(iv) Other means of hoisting may be used only if the containers and hoisting means are designed for such use.

(2) *Intermodal container spreaders.* (i) When using intermodal container spreaders that employ lanyards for activation and load disengagement, all possible precautions shall be taken to prevent accidental release of the load.

(ii) Intermodal container spreaders that utilize automatic twist lock systems shall be designed and used so that a suspended load cannot accidentally be released.

(g) *Safe container top access.* A safe means of access shall be provided for each employee required to work on the top of an intermodal container. Unless ladders are used for access, such means shall comply with the requirements of § 1917.45(j) of this chapter.

(h) *Employee hoisting prohibition.* Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

(i) *Portable ladder access.* When other safer means are available, portable ladders shall not be used in gaining access to container stacks more than two containers high.

(j) *Fall protection.* (1) *Containers being handled by container gantry cranes.*

(i) After July 26, 1999, where a container gantry crane is being used to handle containers, the employer shall ensure that no employee is on top of a container. Exception: An employee may be on top of a container only to perform a necessary function that cannot be eliminated by the use of positive container securing devices.[6]

(ii) After July 26, 1999, the employer shall ensure that positive container securing devices, such as semi-automatic twist locks and above deck cell guides, are used wherever container gantry cranes are used to hoist containers.

(iii) The employer shall ensure that each employee on top of a container is protected from fall hazards by a fall protection system meeting the requirements of paragraph (k) of this section.

(2) *Containers being handled by other hoisting devices.* Where containers are being handled by hoisting devices other than container gantry cranes, the employer shall ensure that each employee on top of a container is protected by a fall protection system meeting the requirements of paragraph (k) of this section.

(3) *Other exposure to fall hazards.* The employer shall ensure that each employee exposed to a fall hazard is protected by a fall protection system meeting the requirements of paragraph (k) of this section. Exception: Where the employer can demonstrate that fall protection for an employee would be infeasible or create a greater hazard due to vessel design, container design, container storage, other cargo stowage, container handling equipment, lifting gear, or port conditions, the employer shall alert the affected employee about the fall hazard and instruct the employee in ways to minimize exposure to that hazard.

(k) *Fall protection systems.* When fall protection systems required by paragraph (j) of this section are employed, the following shall apply:

(1) Each fall protection system component, except anchorages, shall have fall arrest/restraint as its only use.

(2) Each fall protection system subjected to impact loading shall be immediately withdrawn from service and not be used again until inspected and determined by a designated person to be undamaged and suitable for use.

(3) Each fall protection system shall be rigged so that a falling employee cannot contact any lower level stowage or vessel structure.

(4) Each fall protection system adopted for use shall have an energy absorbing mechanism that will produce an arresting force on an employee of not greater than 1800 pounds (8 kN).

(5) Each component of a fall protection system shall be designed and used to prevent accidental disengagement.

(6) Each fall protection system's fixed anchorages shall be capable of sustaining a force of 5,000 pounds (22.2 kN) or be certified as capable of sustaining at least twice the potential impact load of an employee's fall. Such certification must be made by a qualified person.[7] When more than one employee is attached to an anchorage, these limits shall be multiplied by the number of employees attached.

(7) When ''live'' (activated) container gantry crane lifting beams or attached devices are used as anchorage points, the following requirements apply:

(i) The crane shall be placed into a ''slow'' speed mode;

(ii) The crane shall be equipped with a remote shut-off switch that can stop trolley, gantry, and hoist functions and that is in the control of the employee(s) attached to the beam; and

[5] A heavily laden container is one that is loaded to within 20 percent of its rated capacity.

[6] Examples of work that may not be eliminated by positive container securing devices and that may require employees to work on top of containers include, but are not limited to: installing or removing bridge clamps; hooking up or detaching over-height containers; or freeing a jammed semi-automatic twist lock.

[7] For the purposes of this paragraph, qualified person means one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project, or product.

(iii) A visible or audible indicator shall be present to alert the exposed employee(s) when the remote shut-off is operational.

(8) Fall protection system components, other than the anchorages, shall be certified as a unit of being capable of sustaining at least twice the potential impact load of an employee's fall. Such certification shall be made by a qualified person.[8]

(9) Each fall protection system shall incorporate the use of a full body harness.

(10) Each device, such as a safety cage, used to transport an employee(s) by being attached to a container gantry crane spreader, shall have a secondary means to prevent accidental disengagement and the secondary means shall be engaged.

(11) Each fall protection system shall be inspected before each day's use by a designated person. Any defective components shall be removed from service.

(12) Before using any fall protection system, the employee shall be trained in the use and application limits of the equipment, proper hookup, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(13) The employer shall establish and implement a procedure to retrieve personnel safely in case of a fall.

(l) *Working along unguarded edges.* The employer shall provide, and ensure that the employee use, fall protection meeting the requirements of paragraph (k) of this section whenever the employee works along an unguarded edge where a fall hazard exists (see § 1918.2).

§ 1918.86 Roll-on roll-off (Ro-Ro) operations[9] (See also § 1918.25).

(a) *Traffic control system.* An organized system of vehicular and pedestrian traffic control shall be established and maintained at each entrance/exit ramp and on ramps within the vessel as traffic flow warrants.

(b) *Ramp load limit.* Each ramp shall be plainly marked with its load capacity. The marked capacity shall not be exceeded.

(c) *Pedestrian traffic.* Stern and side port ramps also used for pedestrian access shall meet the requirements of § 1918.25. Such ramps shall provide a physical separation between pedestrian and vehicular routes. When the design of the ramp prevents physical separation, a positive means shall be established to prevent simultaneous use of the ramp by vehicles and pedestrians.

(d) *Ramp maintenance.* Ramps shall be properly maintained and secured.

(e) *Hazardous routes.* Before the start of Ro-Ro operations, the employer shall identify any hazardous routes or areas that could be mistaken for normal drive-on/drive-off routes. Such hazardous routes shall be clearly marked and barricaded.

(f) *Air brake connections.* Each tractor shall have all air lines connected when pulling trailers equipped with air brakes and shall have the brakes tested before commencing operations.

(g) *Trailer load limits.* After July 27, 1998, flat bed and low boy trailers shall be marked with their cargo capacities and shall not be overloaded.

(h) *Cargo weights.* Cargo to be handled via a Ro-Ro ramp shall be plainly marked with its weight in pounds (kilograms). Alternatively, the cargo stow plan or equivalent record containing the actual gross weight of the load may be used to determine the weight of the cargo.

(i) *Tractors.* Tractors used in Ro-Ro operations shall have:

(1) Sufficient power to ascend ramp inclines safely; and

(2) Sufficient braking capacity to descend ramp inclines safely.

(j) *Safe speeds.* Power driven vehicles used in Ro-Ro operations shall be operated at speeds that are safe for prevailing conditions.

(k) *Ventilation.* Internal combustion engine-driven vehicles shall be operated only where adequate ventilation exists or is provided. (Air contaminant requirements are found in § 1918.94 and part 1910, subpart Z, of this chapter.)

(l) *Securing cargo.* Cargo loaded or discharged during Ro-Ro operations shall be secured to prevent sliding loads.

(m) *Authorized personnel.* Only authorized persons shall be permitted on any deck while loading or discharging operations are being conducted. Such authorized persons shall be equipped with high visibility vests (or equivalent protection[10]).

Note to paragraph (m): High visibility vests or equivalent protection means high visibility/retroreflective materials which are intended to provide conspicuity of the user by day through the use of high visibility (fluorescent) material and in the dark by vehicle headlights through the use of retroreflective material. The minimum area of material for a vest or equivalent protection is .5 m^2 (760 $in.^2$) for fluorescent (background) material and .13m^2 (197 $in.^2$) for retroreflective material.

(n) *Vehicle stowage positioning.* Drivers shall not drive vehicles, either forward or backward, while any personnel are in positions where they could be struck.

§ 1918.87 Ship's cargo elevators.

(a) *Safe working load.* The safe working loads of ship's cargo elevators shall be determined and followed.

(b) *Load distribution.* Loads shall be evenly distributed and maintained on the elevator's platform.

(c) *Elevator personnel restrictions.* Personnel shall not be permitted to ride on the elevator's platform if a fall hazard exists. (See § 1918.2.)

(d) *Open deck barricades.* During elevator operation, each open deck that presents a fall hazard to employees shall be effectively barricaded.

§ 1918.88 Log operations.

(a) *Working in holds.* When loading logs into the holds of vessels and using dumper devices to roll logs into the wings, the employer shall ensure that employees remain clear of areas where logs being dumped could strike, roll upon, or pin them.

(b) *Personal flotation devices.* Each employee working on a log boom shall be protected by a personal flotation device meeting the requirements of § 1918.105(b)(2).

(c) *Footwear.* The employer shall provide each employee that is working logs with appropriate footwear, such as spiked shoes or caulked sandals, and shall ensure that each employee wears appropriate footwear to climb or walk on logs.

(d) *Lifelines.* When employees are working on log booms or cribs, lifelines shall be furnished and hung overside to the water's edge.

(e) *Jacob's ladder.* When a log boom is being worked, a Jacob's ladder meeting the requirements of § 1918.23 shall be provided for each gang working alongside unless other safe means of access (such as the vessel's gangway) is provided. However, no more than two Jacob's ladders are required for any single log boom being worked.

(f) *Life-ring.* When working a log boom alongside a ship, a U.S. Coast Guard approved 30-inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line, shall be provided either on the floating unit itself or aboard the ship close to each floating unit being worked.

[8] For the purposes of this paragraph, qualified person means one with a recognized degree or professional certificate and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specifications in the subject work, project, or product.

[9] Ro-Ro operations occur only on Ro-Ro vessels which are vessels whose cargo is driven on or off the vessel by way of ramps and moved within the vessel by way of ramps and/or elevators.

[10] Decals on hard hats will not be considered equivalent protection for the purposes of this paragraph.

(g) *Rescue boat.* When employees are working on rafts or booms, a rescue boat capable of effecting an immediate rescue shall be available. Powered rescue boats are required when the current exceeds one knot.

(h) *Log rafts.* When an employee is working logs out of the water, walking sticks [11] (safety sticks) shall be provided as follows:

(1) They shall be planked and be no less than 24 inches (.61 m) wide;

(2) They shall extend along the entire length of all rafts on the side(s) of the vessel being worked, and to the means of access to the log raft(s); and

(3) They shall be buoyant enough to keep the walking surface above the waterline when employees are walking on them.

§ 1918.89 Handling hazardous cargo (See also § 1918.2 and § 1918.99).

Hazardous cargo shall be slung and secured so that neither the draft nor individual packages can fall because of tipping of the draft or slacking of the supporting gear.

Subpart I—General Working Conditions.

§ 1918.90 Hazard communication.

See § 1918.1(b)(4).

§ 1918.91 Housekeeping.

(a) *General.* Active work areas shall be kept free of equipment, such as lashing gear, and materials not in use, and clear of debris, projecting nails, strapping and other objects not necessary to the work in progress.

(b) *Slippery surfaces.* The employer shall eliminate conditions causing slippery walking and working surfaces in immediate areas used by employees.

(c) *Free movement of drafts.* Dunnage shall not be placed at any location where it interferes with the free movement of drafts.

(d) *Dunnage height.* Dunnage racked against sweat battens or bulkheads shall not be used when the levels of such racks are above the safe reach of employees.

(e) *Coaming clearance.* Dunnage, hatch beams, tarpaulins or gear not in use shall be stowed no closer than three feet (.91 m) to the port and starboard sides of the weather deck hatch coaming.

(f) *Nails.* (1) Nails that are protruding from shoring or fencing in the work area shall be rendered harmless.

(2) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the work area, or, if left in the area, the nails shall be rendered harmless.

(g) *Ice aloft.* Employees shall be protected from ice that may fall from aloft.

§ 1918.92 Illumination.

(a) *Walking, working, and climbing areas.* Walking, working, and climbing areas shall be illuminated. Unless conditions described in the regulations of the U.S. Coast Guard (33 CFR 154.570) exist for specific operations, illumination for cargo transfer operations shall be of a minimum light intensity of five foot-candles (54 lux). Where work tasks require more light to be performed safely, supplemental lighting shall be used.

(b) *Intensity measurement.* The lighting intensity shall be measured at the task/working surface, in the plane in which the task/working surface is present.

(c) *Arrangement of lights.* Lights shall be arranged so that they do not shine into the eyes of winch-drivers, crane operators or hatch tenders. On Ro-Ro ships, stationary lights shall not shine directly into the eyes of drivers.

(d) *Portable lights.* Portable lights shall meet the following requirements:

(1) Portable lights shall be equipped with substantial reflectors and guards to prevent materials from coming into contact with the bulb.

(2) Flexible electric cords used with temporary lights shall be designed by the manufacturer for hard or extra-hard usage. Temporary and portable lights shall not be suspended by their electric cords unless the cords and lights are designed for this means of suspension. Connections and insulation shall be maintained in safe condition.

(3) Electric conductors and fixtures for portable lights shall be so arranged as to be free from contact with drafts, running gear, and other moving equipment.

(4) Portable cargo lights furnished by the employer for use aboard vessels shall be listed as approved for marine use by the U.S. Coast Guard or by a nationally recognized testing laboratory (see § 1910.7).

(e) *Entry into darkened areas.* Employees shall not be permitted to enter dark holds, compartments, decks or other spaces without a flashlight or other portable light. The use of matches or open flames is prohibited.

§ 1918.93 Hazardous atmospheres and substances (See also § 1918.2).

(a) *Purpose and scope.* This section covers areas in which the employer knows, or has reason to believe, that a hazardous atmosphere or substance may exist, except where one or more of the following sections apply: § 1918.94(a), Carbon monoxide; § 1918.94(b), Fumigated grains; § 1918.94(c), Fumigated tobacco; § 1918.94(d), Other fumigated cargoes; § 1918.94(e), Catch of menhaden and similar species of fish.

(b) *Determination of the hazard.* When the employer knows, or has reason to believe, that a space on a vessel contains or has contained a hazardous atmosphere, a designated and appropriately equipped person shall test the atmosphere prior to employee entry to detect whether a hazardous atmosphere exists.

(c) *Testing during ventilation.* When mechanical ventilation is used to maintain a safe atmosphere, tests shall be made by a designated person to ensure that the atmosphere is not hazardous.

(d) *Entry into hazardous atmospheres.* Only designated persons shall enter hazardous atmospheres, in which case the following provisions shall apply:

(1) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirements of subpart J of this part;

(2) Persons entering a space containing a hazardous atmosphere shall be instructed about the hazards, precautions to be taken, and the use of protective and emergency equipment. Standby observers, similarly equipped and instructed, shall continuously monitor the activity of employees within such space;

(3) Except in emergency or rescue operations, employees shall not enter any atmosphere identified as flammable or oxygen-deficient (less than 19.5% oxygen). Persons who may be required to enter flammable or oxygen-deficient atmospheres in emergency operations shall be instructed in the dangers attendant to those atmospheres and be instructed in the use of self-contained breathing apparatus which shall be used for entry.

(4) To prevent inadvertent employee entry into spaces identified as having hazardous, flammable or oxygen-deficient atmospheres, appropriate warning signs or equivalent means shall be posted at all means of access to those spaces.

(e) *Asbestos cargo leak.* When the packaging of asbestos cargo leaks, spillage shall be cleaned up by designated employees protected from the harmful effects of asbestos as required by § 1910.1001 of this chapter.

[11] A ''walking stick'' is two logs bolted or otherwise secured together with two or three planks firmly attached on top that serves as a floating walking and working surface and that is used in the loading of logs onto vessels from the water.

§ 1918.94 Ventilation and atmospheric conditions (See also § 1918.2, definition of Hazardous cargo, materials, substance or atmospheres).

(a) *Ventilation with respect to carbon monoxide.* (1) When internal combustion engines exhaust into a hold, intermediate deck, or any other compartment, the employer shall ensure that the atmosphere is tested as frequently as needed to prevent carbon monoxide (CO) concentrations from exceeding allowable limits. Such tests shall be made in the area in which employees are working by persons competent in the use of the test equipment and procedures. If operations are in a deep tank or refrigerated compartment, the first test shall be made within one half hour of the time the engine starts. To decide the need for further testing, the initial test in all other cargo handling areas shall be taken no later than one hour after the time the engine starts.

(i) The CO content of the atmosphere in a compartment, hold, or any enclosed space shall be maintained at not more than 50 parts per million (ppm) (0.005%) as an eight hour average area level and employees shall be removed from the enclosed space if the CO concentration exceeds a ceiling of 100 ppm (0.01%). Exception: The ceiling shall be 200 ppm (0.02%) instead of 100 ppm (0.01%) for Ro-Ro operations [12]

Note to paragraph (a)(1)(i): The term eight hour average area level means that for any period in which the concentration exceeds 50 parts per million, the concentration shall be maintained for a corresponding period below 50 parts per million.

(ii) When both natural ventilation and the vessel's ventilation system are inadequate to keep the CO concentration within the allowable limits, the employer shall use supplementary means to bring such concentration within allowable limits, as determined by monitoring.

(2) The intakes of portable blowers and any exposed belt drives shall be guarded to prevent injury to employees.

(3) The frames of portable blowers shall be grounded at the source of the current by means of an equipment grounding conductor run with or enclosing the circuit conductors. When the vessel is the source of the current, the equipment grounding conductor shall be bonded to the structure of the vessel. Electric cords shall be free from visible defects.

(b) *Fumigated grains.* (1) Before commencing to handle bulk grain in any compartment of a vessel in which employees will or may be present, the employer shall:

(i) Determine whether the grain has been or will be fumigated at the elevator; and

(ii) Determine whether that compartment, or any cargo within it loaded at a prior berth, has been treated with a fumigant or any other chemical.

(2) If fumigant or chemical treatment has been carried out, or if there is reason to suspect that such treatment has been carried out, it shall be determined by atmospheric testing that the compartment's atmosphere is within allowable limits. (See paragraph (b)(3) of this section.)

(3) A test of the fumigant concentration in the atmosphere of the compartment shall be made after loading begins and before employees enter the compartment. Additional tests shall be made as often as necessary to ensure that hazardous concentrations do not develop.

(i) Tests for fumigant concentration shall be conducted by a designated person, who shall be thoroughly familiar with the characteristics of the fumigant being used, the correct procedure for measurement, the proper measuring equipment to be used, the fumigant manufacturers' recommendations and warnings, and the proper use of personal protective equipment to guard against the specific hazard.

(ii) If the concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturer, or exceeds the permissible exposure limits of part 1910, subpart Z of this chapter, whichever is lower, all employees shall be removed from such compartments and shall not be permitted to reenter until tests prove that the atmosphere is within allowable limits.

(iii) No employee shall be permitted to enter any compartment in which grain fumigation has been carried out, or any compartment immediately next to such a compartment, until it has been determined by testing that the atmosphere in the compartment to be entered is within allowable limits for entry.

(iv) In the event a compartment containing a hazardous or unknown concentration of fumigants must be entered for testing of the atmosphere, or for emergency purposes, each employee entering shall be protected by respiratory protective equipment following the provisions of § 1918.102, and by any protective clothing and other personal protective equipment recommended by the fumigant manufacturer for protection against the particular hazard. At least two other employees shall be stationed outside the compartment as observers, to provide rescue services in case of emergency. The observers shall be equipped with similar personal protective equipment.

(v) One or more employees on duty shall be equipped and trained to provide any specific emergency medical treatment stipulated for the particular fumigant.

(vi) Emergency equipment required by this paragraph shall be readily accessible wherever fumigated grains are being handled.

(4) If a compartment is treated for local infestation before loading grain by a chemical other than a fumigant, the employee applying the treatment, and any other employees entering the compartment, shall be provided with and required to use any personal protective equipment recommended by the manufacturer of the product to protect them against the effects of exposure.

(c) *Fumigated tobacco.* The employer shall not load break-bulk tobacco until the carrier has provided written notification about whether or not the cargo has been fumigated. If break-bulk tobacco cargo has been treated with any toxic fumigant, loading shall not commence until a written warranty has been received from the fumigation facility that the aeration of the cargo has been such as to reduce the concentration of the fumigant to within the level specified as hazardous by the fumigant manufacturer, or does not exceed the permissible exposure limits of part 1910, subpart Z of this chapter, whichever is lower. Such notification and warranty shall be maintained for at least 30 days after the loading of the tobacco has been completed, and shall be available for inspection.

(d) *Other fumigated cargoes.* Before commencing to load or discharge fumigated cargo other than the cargo specifically addressed in paragraphs (b) and (c) of this section, the employer shall determine that the concentration of fumigants is within the level specified as hazardous by the fumigant manufacturer, or does not exceed the permissible exposure limits of part 1910, subpart Z of this chapter, whichever is lower.

(e) *Grain dust.* When employees are exposed to concentrations of grain dust greater than the allowable limit found in subpart Z of part 1910 of this chapter, they shall be protected by suitable respiratory protective equipment as required by § 1918.102.

(f) *Catch of menhaden and similar species of fish.* (1) The provisions of this

[12] Ro-Ro operations occur only on Ro-Ro vessels which are vessels whose cargo is driven on or off the vessel by way of ramps and moved within the vessel by way of ramps and/or elevators.

paragraph shall not apply to vessels having and utilizing refrigerated holds for the carriage of all cargo.

(2) After a vessel has arrived at berth for discharge of menhaden, but before personnel enter the hold, and as frequently thereafter as tests show to be necessary, tests shall be made of the atmosphere in the vessel's hold to ensure a safe work space. The tests shall be done for the presence of hydrogen sulfide and for oxygen deficiency.

(3) Tests required by paragraph (f)(2) of this section shall be made by designated supervisory personnel, trained and competent in the nature of hazards and the use of test equipment and procedures.

(4) Before employees enter a hold it shall be tested for hydrogen sulfide and oxygen deficiency. Employees shall not enter the hold when the hydrogen sulfide level exceeds 20 ppm ceiling or when the oxygen content is less than 19.5 percent, except in emergencies.

§ 1918.95 Sanitation.

(a) *Washing and toilet facilities.* (1) Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the worksite. The facilities shall have:

(i) Running water, including hot and cold or tepid water, at a minimum of one accessible location (when longshoring operations are conducted at locations without permanent facilities, potable water may be provided instead of running water);

(ii) Soap;

(iii) Individual hand towels, clean individual sections of continuous toweling, or warm air blowers; and

(iv) Fixed or portable toilets in separate compartments with latch-equipped doors. Separate toilet facilities shall be provided for male and female employees unless toilet rooms will be occupied by only one person at a time.

(2) Washing and toilet facilities shall be regularly cleaned and maintained in good order.

(b) *Drinking water.* (1) Potable drinking water shall be accessible to employees at all times.

(2) Potable drinking water containers shall be clean, containing only water and ice, and shall be fitted with covers.

(3) Common drinking cups are prohibited.

(c) *Prohibited eating areas.* Consumption of food or beverages in areas where hazardous materials are stowed or being handled is prohibited.

(d) *Garbage and overboard discharges.* Work shall not be conducted close to uncovered garbage or in the way of overboard discharges from the vessel's sanitary lines unless employees are protected from the garbage or discharge by a baffle or splash boards.

§ 1918.96 Maintenance and repair work in the vicinity of longshoring operations.

(a) *Noise interference* (See also § 1918.1(b)(6).) Longshoring operations shall not be carried on when noise interferes with communications of warnings or instructions.

(b) *Falling objects.* Longshoring operations shall not be carried on in the hold or on deck beneath work being conducted overhead whenever such work exposes the employee to a hazard of falling objects.

(c) *Hot work.* Longshoring operations shall not be carried on where the employee is exposed to damaging light rays, hot metal, or sparks from welding or cutting.

(d) *Abrasive blasting and spray painting.* Longshoring operations shall not be carried on in the immediate vicinity of abrasive blasting or spray painting operations.

(e) *Machine guarding.* (See also § 1918.2, definition of ''Danger zone''.)

(1) Danger zones on machines and equipment used by employees shall be guarded.

(2) The power supply to machines shall be turned off, locked out, and tagged out during repair, adjustment, or servicing.

§ 1918.97 First aid and lifesaving facilities. (See Appendix V of this part).

(a) *Injury reporting.* The employer shall require each employee to report every work-related injury, regardless of severity, to the employer.

(b) *First aid.* A first aid kit shall be available at or near each vessel being worked. At least one person holding a valid first aid certificate, such as is issued by the Red Cross or other equivalent organization, shall be available to render first aid when work is in progress.

(c) *First aid kits.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a person certified in first aid and cognizant of the hazards found in marine cargo handling operations. The contents shall be checked at intervals that allow prompt replacement of expended items.

(d) *Stretchers.* (1) For each vessel being worked, at least one Stokes basket stretcher, or its equivalent, shall be available to be permanently equipped with bridles for attachment to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage to the stretcher.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five (lifting capability of 5,000 pounds), and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured and have no burrs. Damaged stretchers shall not be used until repaired.

(7) Stretchers in permanent locations shall be mounted to prevent damage and be protected from the elements if located out-of-doors. If concealed from view, enclosures shall be marked to indicate the location of the lifesaving equipment.

(e) *Life-rings.* (1) The employer shall ensure that there is in the vicinity of each vessel being worked at least one U.S. Coast Guard approved 30-inch (76.2 cm) life-ring with no less than 90 feet (27.4 m) of line attached, and at least one portable or permanent ladder that will reach from the top of the apron to the surface of the water.

(2) In addition, when working a barge, scow, raft, lighter, log boom, or carfloat alongside a ship, a U.S. Coast Guard approved 30-inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

(f) *Communication.* Telephone or equivalent means of communication shall be readily available at the worksite.

§ 1918.98 Qualifications of machinery operators and supervisory training.

(a) *Qualification of machinery operators.* (1) Only an employee determined by the employer to be competent by reason of training or experience, and who understands the signs, notices and operating instructions and is familiar with the signal code in use, shall be permitted to operate a crane, winch, or other power-operated cargo handling apparatus, or any power-operated vehicle, or give signals to the operator of any hoisting apparatus. However, an employee being trained and supervised by a designated person may operate such machinery and give signals to operators during training.

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments that may suddenly incapacitate the employee, shall be permitted to operate a crane, winch or other power-operated cargo handling apparatus or a power-operated vehicle.

Note to paragraph (a)(2): OSHA is defining suddenly incapacitating medical ailments consistent with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990). Therefore, employers who act in accordance with the employment provisions (Title I) of the ADA (42 U.S.C. 12111–12117), the regulations implementing Title I (29 CFR part 1630), and the Technical Assistance Manual for Title I issued by the Equal Employment Opportunity Commission (Publication number: EEOC–M1A), will be considered as being in compliance with this paragraph.

(b) *Supervisory accident prevention proficiency.* (1) By July 16, 1999, each immediate supervisor of a cargo handling operation of more than five persons shall satisfactorily complete a course in accident prevention.

(2) Each employee newly assigned to supervisory duties after that date shall be required to meet the provisions of this paragraph within 90 days of such assignment.

(3) The accident prevention course shall consist of instruction suited to the particular operations involved.[13]

§ 1918.99 Retention of DOT markings, placards and labels.

(a) Any employer who receives a package of hazardous material that is required to be marked, labeled or placarded in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations (49 CFR parts 171 through 180) shall retain those markings, labels and placards on the package until the packaging is sufficiently cleaned of residues and purged of vapors to remove any potential hazards.

(b) Any employer who receives a freight container, rail freight car, motor vehicle, or transport vehicle that is required to be marked or placarded in accordance with the Hazardous Materials Regulations shall retain those markings and placards on the freight container, rail freight car, motor vehicle or transport vehicle until the hazardous materials that require the marking or placarding are sufficiently removed to prevent any potential hazards.

(c) Markings, placards and labels shall be maintained in a manner that ensures that they are readily visible.

(d) For non-bulk packages that will not be reshipped, the provisions of the section are met if a label or other acceptable marking is affixed in accordance with OSHA's Hazard Communication Standard (29 CFR 1910.1200).

(e) For the purposes of this section, the term ''hazardous material'' has the same definition as in the Hazardous Materials Regulations (49 CFR parts 171 through 180).

§ 1918.100 Emergency action plans.

(a) *Scope and application.* This section requires all employers to develop and implement an emergency action plan.[14] The emergency action plan shall be in writing (except as provided in the last sentence of paragraph (e)(iii) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

(b) *Elements.* The following elements, at a minimum, shall be included in the plan:

(1) Emergency escape procedures and emergency escape route assignments;

(2) Procedures to be followed by employees who remain to operate critical operations before they evacuate;

(3) Procedures to account for all employees after emergency evacuation has been completed;

(4) Rescue and medical duties for those employees who are to perform them;

(5) The preferred means of reporting fires and other emergencies; and

(6) Names or regular job titles of persons or departments that can be contacted for further information or explanation of duties under the plan.

(c) *Alarm system.* The employer shall establish an employee alarm system that provides warning for necessary emergency action or for reaction time for safe escape of employees from the workplace or the immediate work area, or both.

(d) *Evacuation.* The employer shall establish the types of evacuation to be used in emergency circumstances.

(e) *Training.* (1) Before implementing the emergency action plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.

(2) The employer shall review the plan with each employee covered by the plan at the following times:

(i) Initially when the plan is developed;

(ii) Whenever the employee's responsibilities or designated actions under the plan change; and

(iii) Whenever the plan is changed.

(3) The employer shall review with each employee upon initial assignment those parts of the plan that the employee must know to protect the employee in the event of an emergency. The written plan shall be kept at the workplace and made available for employee review. Employers with 10 or fewer employees may communicate the plan orally to employees and need not maintain a written plan.

Subpart J—Personal Protective Equipment

§ 1918.101 Eye and face protection.

(a) The employer shall ensure that:

(1) Each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Such equipment shall comply with American National Standards Institute, ANSI Z–87.1–1989, ''Practice for Occupational and Educational Eye and Face Protection.''

(2) For an employee wearing corrective glasses, eye protection equipment required by paragraph (a)(1) of this section shall be of the type that can be worn over glasses. Prescription-ground safety lenses may be substituted if they provide equivalent protection.

(b) Eye protection shall be maintained in good condition.

(c) Used eye protection shall be cleaned and disinfected before issuance to another employee.

§ 1918.102 Respiratory protection.

See § 1918.1(b)(12).

§ 1918.103 Head protection.

(a) The employer shall ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling objects.

(b) Such equipment shall comply with American National Standards Institute, ANSI Z–89.1–1986, ''Personnel Protection-Protective Headwear for Industrial Workers-Requirements.''

(c) Previously worn protective hats shall be cleaned and disinfected before issuance by the employer to another employee.

[13] The following are recommended topics: Safety responsibility and authority; elements of accidents prevention; attitudes, leadership and motivation; hazards of longshoring, including peculiar local circumstances; hazard identification and elimination; applicable regulations; and accident investigations.

[14] When an employer directs his employees to respond to an emergency that is beyond the scope of the Emergency Action Plan developed in accordance with this section § 1910.120(q) shall apply.

§ 1918.104 Foot protection.

(a) The employer shall ensure that each affected employee wears protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole.

(b) Such equipment shall comply with American National Standards Institute, ANSI Z–41–1991, ''American National Standard for Personal Protection-Protective Footwear.''

§ 1918.105 Other protective measures.

(a) *Protective clothing.* (1) The employer shall provide and shall require the wearing of special protective clothing for each employee engaged in work where protective clothing is necessary.

(2) When necessary, protective clothing shall be cleaned and disinfected before reissuance.

(b) *Personal flotation devices (PFDs).* (1) The employer shall provide and shall require the wearing of PFDs for each employee engaged in work in which the employee might fall into the water.

(2) PFDs (life preservers, life jackets, and work vests) worn by each affected employee shall be any United States Coast Guard (USCG) approved and marked Type I PFD, Type II PFD or Type III PFD; or shall be a USCG approved Type V PFD that is marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, Coast Guard Lifesaving Equipment Specifications.

(3) Personal flotation devices shall be maintained in safe condition and shall be considered unserviceable when damaged in a manner that affects buoyancy or fastening capability.

Appendix I to Part 1918—Cargo Gear Register and Certificates (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard. The language in this appendix is taken directly from the recommended ILO document.

Form No. 1

Identity of National Authority or Competent Organization

Register of Ships' Lifting Appliances and Cargo Handling Gear

Name of Ship _____

Official Number _____

Call Sign _____

Port of Registry _____

Name of Owner _____

Register Number _____

Date of Issue _____

Issued by _____

Signature and Stamp _____

Note: This register is the standard international form as recommended by the International Labour Office in accordance with the ILO Convention No. 152.

General

The tests, examinations and inspections indicated in this register are based on the requirements of ILO Convention 152 and Recommendation 160. They are intended to ensure that ships having lifting appliances are initially certified by a competent person, and to establish periodically that they continue to be in safe working order to the satisfaction of a competent person acceptable to a competent authority. A Register of lifting appliances and items of loose gear shall be kept in a form prescribed by the competent authority, account being taken of this model recommended by the International Labour Office. This Register and related certificates shall be kept available to any person authorized by the competent authority. The Register and certificates for gear currently aboard the ship shall be preserved for at least five years after the date of the last entry.

Instruction

1. Initial Examination and Certification

1.1. Every lifting appliance shall be certified by a competent person before being taken into use for the first time to ensure that it is of good design and construction and of adequate strength for the purpose for which it is intended.

1.2. Before being taken into use for the first time, a competent person shall supervise and witness testing, and shall thoroughly examine every lifting appliance.

1.3. Every item of loose gear shall, before being taken into use for the first time, shall be tested, thoroughly examined and certified by a competent person, in accordance with national law or regulations.

1.4. Upon satisfactory completion of the procedures indicated above, the competent person shall complete and issue the Register of lifting appliances and attach the appropriate certificates. An entry shall be made in part I of the Register.

1.5. A rigging plan showing the arrangement of lifting appliances shall be provided. In the case of derricks and derrick cranes, the rigging should show at least the following information:

(a) The position of guys;

(b) The resultant force on blocks, guys, wire ropes and booms;

(c) The position of blocks;

(d) The identification mark of individual items; and

(e) Arrangements and working range of union purchase.

2. Periodic Examination and Re-testing

2.1. All lifting appliances and every item of loose gear shall be thoroughly examined by a competent person at least once in every twelve months. The particulars of these thorough examinations shall be entered in part I of the Register.

2.2. Re-testing and thorough examination of all lifting appliances and every item of loose gear is to be carried out:

(a) after any substantial alteration or renewal, or after repair to any stress bearing part, and

(b) in the case of lifting appliances, at least once in every five years.

2.3. The retesting referred to in paragraph 2.2(a) may be omitted provided the part which has been renewed or repaired is subjected by separate test, to the same stress as would be imposed on it if it had been tested in-situ during the testing of the lifting appliance.

2.4. The thorough examinations and tests referred to in paragraph 2.2. are to be entered in part I of the Register.

2.5. No new item of loose gear shall be manufactured of wrought iron. Heat treatment of any existing wrought iron components should be carried out to the satisfaction of the competent person. No heat treatment should be applied to any item of loose gear unless the treatment is in accordance with the manufacturer's instruction; and to the satisfaction of the competent person. Any heat treatment and the associated examination are to be recorded by the competent person in part I of the Register.

3. Inspections

3.1. Regular visual inspections of every item of loose gear shall be carried out by a responsible person before use. A record of these regular inspections is to be entered in part II of the Register, but entries need only be made when the inspection has indicated a defect in the item.

4. Certificates

4.1. The certification forms to be used in conjunction with this Register (Form No. 1) are as follows:

(Form No. 2)—Certificate of test and thorough examination of lifting appliance.

(Form No. 2(U))—Certificate of test and thorough examination of derricks used in union purchase.

(Form No. 3)—Certificate of test and thorough examination of loose gear.

(Form No. 4)—Certificate of test and thorough examination of wire rope.

Definitions

(a) The term ''competent authority'' means a minister, government department, or other authority empowered to issue regulations, orders or other instructions having the force of law.

(b) The term ''competent person'' means a person appointed by the master of the ship or the owner of the gear to be responsible for the performance of inspections and who has sufficient knowledge and experience to undertake such inspections.

(c) The term ''thorough examination'' means a detailed visual examination by a competent person, supplemented if necessary by other suitable means or measures in order to arrive at a reliable conclusion as to the safety of the lifting appliance or item of loose gear examined.

(d) The term ''lifting appliance'' covers all stationary or mobile cargo handling appliances used on board ship for

suspending, raising or lowering loads or moving them from one position to another while suspended or supported.

(e) The term ''loose gear'' covers any gear by means of which a load can be attached to a lifting appliance, but which does not form an integral part of the appliance or load.

THE FOLLOWING ARE SAMPLE FORMS OF CERTIFICATES AS RECOMMENDED BY THE ILO

[Part I—Thorough Examination of Lifting Appliances and Loose Gear]

Situation and description of lifting appliances and loose gear (with distinguishing numbers or marks, if any) which have been thoroughly examined. (See note 1)	Certificate Nos.	Examination performed (see note 2)	I certify that on the date to which I have appended my signature, the gear shown in col. (1) was thoroughly examined and no defects affecting its safe working condition were found other than those shown in col. (5) (date and signature)	Remarks (to be dated and signed)
(1)	(2)	(3)	(4)	(5)
	.....	.....	.....	
	.....	.....	.....	
	.....	.....	.....	

NOTE 1: If all the lifting appliances are thoroughly examined on the same date it will be sufficient to enter in Col. (1) ''All lifting appliances and loose gear''. If not, the parts that have been thoroughly examined on the dates stated must be clearly indicated.

NOTE 2: The thorough examinations to be indicated in Col. (3) include:

(a) Initial.
(b) 12 monthly.
(c) 5 yearly.
(d) Repair/Damage.
(e) Other thorough examinations.

[Part II—Regular Inspections of Loose Gear]

Situation and description of loose gear (with distinguishing numbers or marks, if any) that has been inspected. (See note 1)	Signature and date of the responsible person carrying out the inspection	Remarks (to be dated and signed)

NOTE 1: All loose gear should be inspected before use. However, entries need only be made when the inspection discloses a defect.

Form No. 2

Identity of National Authority or Competent Organization

Certificate of Test and Thorough Examination of Lifting Appliances

Name of Ship _____

Official Number _____
Call Sign _____
Port of Registry _____
Name of Owner _____
Certificate No. _____

Situation and description of lifting appliances (with distinguishing numbers or marks, if any) which have been tested and thoroughly examined	Angle to the horizontal or radius at which test load applied	Test load (tonnes)	Safe working load at angle or radius shown in col. 2 (tonnes)
(1)	(2)	(3)	(4)

Name and address of the firm or competent person who witnessed testing and carried out thorough examination.

I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found and that the safe working load is as shown.

Date: _____
Place: _____
Signature: _____

Note: This certificate is the standard international form as recommended by the International Labor Office in accordance with ILO Convention No. 152.

Reverse of Form No. 2

Instructions

1. Every lifting appliance shall be tested with a test load which shall exceed the Safe Working Load (SWL) as follows:

SWL	Test load
Up to 20 tonnes	25 percent in excess.
20 to 50 tonnes	5 tonnes in excess.
Over 50 tonnes	10 percent in excess.

2. In the case of derrick systems, the test load shall be lifted with the ship's normal tackle with the derrick at the minimum angle to the horizontal for which the derrick system was designed (generally 15 degrees), or at such greater angle as may be agreed. The angle at which the test was made should be stated in the certificate.

2.1. The SWL shown is applicable to swinging derrick systems only. When derricks are used in union purchase, the SWL (U) is to be shown on Form 2 (U).

2.2. In the case of heavy derricks, care should be taken to ensure that the appropriate stays are correctly rigged.

3. In the case of cranes, the test load is to be hoisted and luffed at slow speed. Gantry and traveling cranes together with their trolleys, where appropriate, are to be traversed and traveled over the full length of their track.

3.1. In the case of variable load-radius cranes, the tests are generally to be carried out with the appropriate test load at maximum, minimum and intermediate radii.

3.2. In the case of hydraulic cranes where limitations of pressure make it impossible to lift a test load 25 percent in excess of the safe working load, it will be sufficient to lift the greatest possible load, but in general this should not be less than 10 percent in excess of the safe working load.

4. As a general rule, tests should be carried out using test loads, and no exception should be allowed in the case of initial tests. In the case of repairs/replacement or when the periodic examination calls for re-test, consideration may be given to the use of spring or hydraulic balances provided the SWL of the lifting appliance does not exceed 15 tonnes. Where a spring or hydraulic balance is used, it shall be calibrated and accurate to within ±2 percent and the indicator should remain constant for five minutes.

4.1. If the test weights are not used, this is to be indicated in Col. (3).

5. The expression ''tonne'' shall mean a tonne of 1000 kg.

6. The terms ''competent person'', ''thorough examination'', and ''lifting appliance'' are defined in Form No. 1.

Note: For recommendations on test procedures reference may be made to the ILO document ''Safety and Health in Dock Work''.

Form No. 2(U)

Identity of National Authority or Competent Organization

Certificate of Test and Thorough Examination of Derricks Used in Union Purchase

Name of Ship _____

Official Number _____

Call Sign _____

Port of Registry _____

Name of Owner _____

Certificate No. _____

Situation and description of derricks used in Union Purchase (with distinguishing numbers or marks) which have been tested and thoroughly examined	Max. height of triangle plate above hatch coaming (m) or max. angle between runners	Test load (tonnes)	Safe working load, SWL when operating in union purchase (tonnes)
(1)	(2)	(3)	(4)

Position of outboard preventer guy attachments:
(a) forward/aft * of mast—(m) and
(b) from ship's centerline—(m)
Position of inboard preventer guy attachments:
(a) forward/aft * of mast—(m) and
(b) from ship's centerline—(m)

* Delete as appropriate.

Name and address of the firm or competent person who witnessed testing and carried out thorough examination

_____

_____

I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found and that the safe working load is as shown.

Date: _____

Signature: _____

Place: _____

Note: This certificate is the standard international form as recommended by the International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. 2 (U)

Instructions

1. Before being taken into use, the derricks rigged in Union Purchase shall be tested with a test load which shall exceed the Safe Working Load (SWL (U)) as follows:

SWL	Test load
Up to 20 tonnes	25 percent in excess.
20 to 50 tonnes	5 tonnes in excess.
Over 50 tonnes	10 percent in excess.

2. Tests are to be carried out at the approved maximum height of the triangle plate above the hatch coaming or at the angle between the cargo runners and with the derrick booms in their working positions, to prove the strength of deck eye plates and the Union Purchase system. These heights or angles must not exceed the values shown on the rigging plan.

3. Tests should be carried out using test loads.

4. The expression ''tonne'' shall mean a tonne of 1000 kg.

5. The terms ''competent person'', ''thorough examination'' and ''lifting appliance'' are defined in Form No. 1.

Note: For recommendations on test procedures, reference may be made to the ILO document ''Safety and Health in Dock Work''.

Form 3

Identity of National Authority or Competent Organization

Certificate of Test and Thorough Examination of Loose Gear

Name of Ship _____

Official Number _____

Call Sign _____

Port of Registry _____

Name of Owner _____

Certificate No. _____

Distinguishing number or mark	Description of loose gear	Number tested	Date of test	Test load (tonnes)	Safe work load (SWL) (tonnes)

Name and address of makers or suppliers:

Name and address of the firm or competent person who witnessed testing and carried out thorough examination.

I certify that the above items of loose gear were tested and thoroughly examined and no defects affecting their SWL were found.

Date: _____

Place: _____

Signature: _____

Note: This certificate is the standard international form as recommended by the International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. 3

Instructions

1. Every item of loose gear is to be tested and thoroughly examined before being put into use for the first time and after any substantial alteration or repair to any part liable to affect its safety. The test loads to be applied shall be in accordance with the following table:

Item	Test load (tonnes)
Single sheave blocks (See Note 1)	4 × SWL
Multi sheave blocks (See Note 2):	
SWL < 25 tonnes	2 × SWL
25 tonnes < SWL ≤ 160 tonnes	(0.933 × SWL) + 27
SWL > 160 tonnes	1.1 × SWL
Chains, hooks, rings, shackles, swivels, etc.:	
SWL < 25 tonnes	2 × SWL
SWL > 25 tonnes	(1.22 × SWL) + 20
Lifting beams, spreaders, frames and similar devices:	
SWL ≤ 10 tonnes	2 × SWL
10 tonnes < SWL ≤ 160 tonnes	(1.04 × SWL) + 9.6
SWL > 160 tonnes	1.1 × SWL

Note: 1. The SWL for a single sheave block, including single sheave blocks with beckets, is to be taken as one-half of the resultant load on the head fitting.

2. The SWL of a multi-sheave block is to be taken as the resultant load on the head fitting.

3. This form may also be used for the certification of interchangeable components of lifting appliances.

4. The expression ''ton'' shall mean a ton of 1,000 kg.

5. The terms ''competent person'', ''thorough examination'' and ''loose gear'' are defined in Form No. 1.

Note: For recommendations on test procedures reference may be made to the ILO document ''Safety and Health in Dock Work''.

Form No. 4

Identity of National Authority or Competent Organization

Certificate of Test and Thorough Examination of Wire Rope

Name of Ship _____

Official Number _____

Call Sign _____

Port of Registry _____

Name of Owner _____

Certificate No. _____

Name and address of maker or supplier	
Nominal diameter of rope (mm) Number of strands Number of wires per strand Core Lay Quality of wire (N/mm^2) Date of test of sample Load at which sample broke (tonnes) Safe working load of rope (tonnes) Intended use	

Name and address of the firm or competent person who witnessed testing and carried out thorough examination.

I certify that the above particulars are correct, and that the rope was tested and thoroughly examined and no defects affecting its SWL were found.

Date: _____

Place: _____

Signature: _____

Note: This certificate is the standard international form as recommended by the International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. 4

Instructions

1. Wire rope shall be tested by sample, a piece being tested to destruction.

2. The test procedure should be in accordance with an International or recognized National standard.

3. The SWL of the rope is to be determined by dividing the load at which the sample broke, by a co-efficient of utilization, determined as follows:

Item	Coefficient
Wire rope forming part of a sling:	
SWL of the sling	5
SWL < 10 tonnes	10 [5]
10 tonnes < SWL ≤ 160 tonnes	(8.85 × SWL) + 1910
SWL > 160 tonnes	3
Wire rope as integral part of a lifting appliance:	
SWL of lifting appliance	10 [4]
SWL ≤ 160 tonnes	(8.85 × SWL) + 1910
SWL > 160 tonnes	3

These coefficients should be adopted unless other requirements are specified by a National Authority.

4. The expression ''tonne'' shall mean a tonne of 1000 kg.

5. The terms ''competent person'', ''thorough examination'' and ''lifting appliance'' are defined in Form No. 1.

Note: For recommendations on test procedures reference may be made to the ILO document ''Safety and Health in Dock Work''.

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear (Mandatory)

Note: This Appendix is mandatory and is to be used in the appropriate sections of part 1918 when certificates or the manufacturers' use recommendations are not available.

TABLE 1.—WIRE ROPE CLIPS

Improved plow steel, rope	Minimum number of clips		Minimum spacing
Inches (cm)	Drop forged	Other material	Inches (cm)
½ or less (1.3)	3	4	3 (7.6)
⅝ (1.6)	3	4	3¾ (9.5)
¾ (1.9)	4	5	4½ (11.4)
⅞ (2.2)	4	5	5¼ (13.3)
1 (2.5)	5	6	6 (15.2)
1⅛ (2.7)	6	6	6¾ (17.1)
1¼ (3.2)	6	7	7½ (18.1)
1⅜ (3.5)	7	7	8½ (21.0)
1½ (3.8)	7	8	9 (22.9)

TABLE 2

Natural Fiber Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=5

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal
90 deg. 60 deg. 45 deg. 30 deg.

Rope diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
½	550	250	1,100	900	750	550
9/16	700	350	1,400	1,200	1,000	700
⅝	900	450	1,800	1,500	1,200	900
¾	1,100	550	2,200	1,900	1,500	1,100
13/16	1,300	650	2,600	2,300	1,800	1,300
⅞	1,500	750	3,100	2,700	2,200	1,500
1	1,800	900	3,600	3,100	2,600	1,800
1 1/16	2,100	1,100	4,200	3,600	3,000	2,100
1⅛	2,400	1,200	4,800	4,200	3,400	2,400
1¼	2,700	1,400	5,400	4,700	3,800	2,700
1 5/16	3,000	1,500	6,000	5,200	4,300	3,000
1½	3,700	1,850	7,400	6,400	5,200	3,700
1⅝	4,500	2,300	9,000	7,800	6,400	4,500
1¾	5,300	2,700	10,500	9,200	7,500	5,300

Rope diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
2	6,200	3,100	12,500	10,500	8,800	6,200
2⅓	7,200	3,600	14,500	12,500	10,000	7,200
2¼	8,200	4,100	16,500	14,000	11,500	8,200
2½	9,300	4,700	18,500	16,000	13,000	9,300
2⅝	10,500	5,200	21,000	18,000	14,500	10,500
Endless Sling						
½	950	500	1,900	1,700	1,400	950
9/16	1,200	600	2,500	2,200	1,800	1,200
⅝	1,600	800	3,200	2,700	2,200	1,600
¾	2,000	950	3,900	3,400	2,800	2,000
13/16	2,300	1,200	4,700	4,100	3,300	2,300
⅞	2,800	1,400	5,600	4,800	3,900	2,800
1	3,200	1,600	6,500	5,600	4,600	3,300
1 1/16	3,800	1,900	7,600	6,600	5,400	3,800
1⅛	4,300	2,200	8,600	8,600	6,100	4,300
1¼	4,900	2,400	9,700	8,400	6,900	4,900
1 5/16	5,400	2,700	11,000	9,400	7,700	5,400
1½	6,700	3,300	13,500	11,500	9,400	6,700
1⅝	8,100	4,100	16,000	14,000	11,500	8,000
1¾	9,500	4,800	19,000	16,500	13,500	9,500
2	11,000	5,600	22,500	19,500	16,000	11,000
2⅓	13,000	6,500	26,000	22,500	18,500	13,000
2¼	15,000	7,400	29,500	25,500	21,000	15,000
2½	16,500	8,400	33,500	29,000	23,500	16,500
2⅝	18,500	9,500	37,000	32,500	26,500	18,500

TABLE 3A

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=6

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal

Rope diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
½	650	350	1,300	1,200	950	650
9/16	800	400	1,600	1,400	1,100	800
⅝	1,000	500	2,000	1,700	1,400	1,000
¾	1,300	700	2,700	2,300	1,900	1,300
13/16	1,600	800	2,600	2,300	2,200	1,600
⅞	1,800	900	3,100	2,700	2,600	1,800
1	2,200	1,100	3,600	3,100	3,100	2,200
1 1/16	2,500	1,300	4,200	3,600	3,600	2,500
1⅛	2,900	1,500	4,800	4,200	4,100	2,900
1¼	3,300	1,700	6,700	5,800	4,700	3,300
1 5/16	3,700	1,900	7,400	6,400	5,300	3,700
1½	4,700	2,400	9,400	8,100	6,700	4,700
1⅝	5,700	2,900	11,500	9,900	8,100	5,700
1¾	6,800	3,400	13,500	12,000	9,600	6,800
2	8,200	4,100	16,500	14,500	11,500	8,200
2⅛	9,700	4,800	19,500	16,500	13,500	9,700
2¼	11,000	5,500	22,000	19,000	15,500	11,000
2½	12,500	6,300	25,500	22,000	18,000	12,500
2⅝	14,500	7,100	28,500	24,500	20,000	14,500

TABLE 3B

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor = 6

TABLE 3B—Continued

Endless Sling						
Basket Hitch						
Angle of rope to horizontal 90 deg. 60 deg. 45 deg. 30 deg.						
Rope diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
1/2	1,200	600	2,400	2,100	1,700	1,200
9/16	1,500	750	2,900	2,500	2,100	1,500
5/8	1,800	900	3,500	3,100	2,500	1,800
3/4	2,400	1,200	4,900	4,200	3,400	2,400
13/16	2,800	1,400	5,600	4,900	4,000	2,800
7/8	3,300	1,600	6,600	5,700	4,600	3,300
1	4,000	2,000	8,000	6,900	5,600	4,000
1 1/16	4,600	2,300	9,100	7,900	6,500	4,600
1 1/8	5,200	2,600	10,500	9,000	7,400	5,200
1 1/4	6,000	3,000	12,000	10,500	8,500	6,000
1 5/16	6,700	3,400	13,500	11,500	9,500	6,700
1 1/2	8,500	4,200	17,000	14,500	12,000	8,500
1 5/8	10,500	5,100	20,500	18,000	14,500	10,500
1 3/4	12,500	6,100	24,500	21,000	17,500	12,500
2	15,000	7,400	29,500	25,500	21,000	15,000
2 1/8	17,500	8,700	35,500	30,100	24,500	17,500
2 1/4	19,500	9,900	39,500	34,000	28,000	19,500
2 1/2	23,000	11,500	45,500	39,500	32,500	23,000
2 5/8	25,500	13,000	51,500	44,500	36,500	25,500

TABLE 4 A.—RATED LOAD FOR GRADE 80 ALLOY STEEL CHAIN SLINGS [1] (CHAIN PER NACM)

Chain size nominal		Single leg sling—90 deg. to horizontal loading		Rated load double leg sling horizontal angle (note 2)					
				60 deg.		45 deg.		39 deg.	
in.	mm	lb	kg	Double at 60 deg.		Double at 45 deg.		Double at 30 deg.	
				lb	kg	lb	kg	lb	kg
8/32	7	3,500	1570	6,100	2,700	4,900	2,200	3,500	1,590
2/8	10	7,100	3200	12,300	5,500	10,000	4,500	7,100	3,200
1/2	13	12,000	5400	20,800	9,400	17,000	7,600	1,200	5,400
5/8	16	18,000	8200	31,300	14,200	25,600	11,600	18,100	8,200
3/4	20	28,300	12800	49,000	22,300	40,000	18,200	28,300	12,900
7/8	22	34,200	15500	59,200	27,200	48,400	22,200	34,200	15,700
1	26	47,700	21600	82,600	37,900	67,400	31,000	47,700	21,900
1 1/4	32	72,300	32800	125,200	56,800	102,200	46,400	72,300	32,800

NOTES:
(1) Other grades of proof tested steel chain include Proof Coil (Grade 28), Hi-Test (Grade 43 Chain, and Transport (Grade 70) Chain. These grades are not recommended for overhead lifting and therefore are not covered by this Standard.
(2) Rating of multi-leg slings adjusted for angle of loading between the inclined leg and the horizontal plane of the load.

TABLE 4 B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, in.
in.	mm	
8/32	7	0.037
3/8	10	0.052
1/2	13	0.060
5/8	16	0.084
3/4	20	0.105
7/8	22	0.116
1	26	0.137
1 1/4	32	0.169

NOTE: For other sizes, consult chain or sling manufacturer.

TABLE 5.—SAFE WORKING LOADS FOR SHACKLES

[In tons of 2,000 pounds]

Material size (inches)	Pin diameter (inches)	Safe working load
1/4	5/8	1.4
5/8	3/4	2.2
3/4	7/8	3.2
7/8	1	4.3
1	1 1/8	5.6
1 1/8	1 1/4	6.7
1 1/4	1 3/8	8.2
1 3/8	1 1/2	10.0
1 1/2	1 5/8	11.9
1 1/4	2	16.2
2	2 1/4	21.1

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6 X 19 OR 6 X 37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH FIBER CORE (FC)

Rated loads [note {1}], Tons (2,000 lb)

Vertical				Choker
Rope diameter, in.	HT	MS	S	HT, MS&S
1/4	0.49	0.51	0.55	0.38
8/16	0.78	0.79	0.85	0.6
3/8	1.1	1.1	1.2	0.85
7/16	1.4	1.5	1.7	1.2
1/2	1.8	2.0	2.1	1.5
9/16	2.3	2.5	2.7	1.9
5/11	2.8	3.1	3.3	2.3
3/4	3.9	4.4	4.8	3.3
7/8	5.2	6.0	6.4	4.5
1	6.7	7.7	8.4	5.9
1 3/8	8.4	9.5	11	7.4
1 1/4	10	12	13	9.0
1 3/8	12	14	16	11
1 1/2	15	17	18	13
1 6/8	17	19	21	15
1 3/4	20	22	25	17
2	26	29	32	22

HT=Hand tucked Splice.
For Hidden Tuck Splice (IWRC), use values in HT (FC) columns.
MS=Mechanical Splice.
S=Poured Socket or Swaged Socket.
NOTES:
(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered [see para. 9.2.2.1(d)].
(2) These values only apply when the D/d ratio (see Fig. 11) is 15 or greater.
(3) These values only apply when the D/d ratio is 25 or greater.
D=Diameter or curvature around which the body of the sling is bent.
d=Diameter of rope.

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6×19 OR 6×37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

Rated loads [note {1}], tons (2,000 lb)

Vertical				Choker	Vertical basket	
					[Note (2)]	[Note (3)]
Rope diameter, in.	HT	MS	S	HT, MS & S	HT	MS & S
3/4	0.53	0.56	0.59	0.31	1.1	1.1
5/16	0.82	0.87	0.92	0.64	1.6	1.7
3/8	1.2	1.2	1.3	0.92	2.3	2.5
7/10	1.5	1.7	1.8	1.2	3.1	3.4
1/2	2.0	2.2	2.3	1.6	4.0	4.4
9/16	2.5	2.8	2.9	2.0	4.9	5.5
6/8	3.0	3.4	3.6	2.6	6.0	6.8
3/4	4.2	4.9	5.1	3.6	8.4	9.7
7/8	5.5	6.6	6.9	4.8	11	13

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6×19 OR 6×37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)—Continued

Rated loads [note {1}], tons (2,000 lb)

Vertical				Choker	Vertical basket	
					[Note (2)]	[Note (3)]
Rope diameter, in.	HT	MS	S	HT, MS & S	HT	MS & S
1	7.2	8.5	9.0	6.3	14	17
1⅛	9.0	10	11	7.9	18	20
1¼	11	13	14	9.7	22	26
1⅜	13	15	17	12	27	31
1½	16	18	20	14	32	37
1⅝	18	21	23	16	37	43
1¾	21	25	27	19	43	49
2	28	32	34	24	55	64

HT=Hand Tucked Splice.
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3.
MS=Mechanical Splice, S=Poured Socket or Swaged Socket.
NOTES:
(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered (see para. 9.2.2.1(d)).
(2) The values only apply when the D/d ratio (see Fig. 11) is 15 or greater.
(3) The values only apply when the D/d ratio is 25 or greater.
D=Diameter or curvature around which the body of the sling is bent.
d=Diameter of rope.

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6 × 19 OR6 × 37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

Rated loads [note {1}], tons (2,000 lb)

Vertical			Choker	Vertical basket [note (2)]
Rope diameter	MS	S	MS&S	MS&S
¼	0.65	0.68	0.48	1.3
5⁄16	1.0	1.1	0.74	2.0
⅜	1.4	1.5	1.1	2.9
7⁄10	1.9	2.0	1.4	3.9
½	2.5	2.7	1.9	5.1
9⁄16	3.2	3.4	2.4	6.4
⅝	3.9	4.1	2.9	7.8
¾	5.6	5.9	4.1	11
⅞	7.6	8.0	5.6	15
1	9.8	10	7.2	20
1⅛	12	13	9.1	24
1¼	15	16	11	30
1⅜	18	19	13	36
1½	21	23	16	42
1⅝	24	26	18	49
1¾	28	31	21	57
2	37	40	28	73

HT=Hand tucked Splice.
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3.
MS=Mechanical Splice.
S=Poured Socket or Swaged Socket.
NOTES:
(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered (see para. 9.2.2.1(d)).
(2) These values only apply when the D/d ratio (see Fig. 11) is 25 or greater.

Appendix III to Part 1918—The Mechanics of Conventional Cargo Gear (Non-mandatory)

Note: This Appendix is non-mandatory and provides an explanation of the mechanics in the correct spotting of cargo handling gear.

Although the most prevalent method of cargo handling is accomplished through the use of modern shoreside container gantry cranes, there are occasions when break-bulk cargo is handled with conventional ship's cargo gear. This appendix provides a reference for those unfamiliar with such cargo gear.

Sections 1918.52, 1918.53, and 1918.54 all address the subject of rigging and operating vessel's cargo handling gear. It is important to understand that under the Burton System of cargo handling (conventional gear consisting of two cargo derricks with married falls), the midships or up-and-down boom should be spotted as close to the fore and aft centerline of the hatch as operationally possible. Such spotting of the up-and-down boom will allow the most effective leads for the guy(s) and preventer(s) to safely support

the lateral stresses generated in the boom(s) by the married falls. As the lead of the guy(s) and preventer(s) approaches the vertical, in supporting the boom(s) head, the total stress in the guy(s) increases rapidly due to the increased vertical force that is generated in the guy(s) in order to counteract any particular horizontal or lateral force exerted on the boom(s) head. The appreciable vertical forces that are generated in this process are transmitted, in substantial part, to the boom(s) and topping lift(s), causing proportionate compressive stresses in the boom(s) and tension stresses in the topping lift(s).

In general, guys and preventers must be located so that enough vertical resistance is developed so as to prohibit the boom(s) from jackknifing as cargo passes across the deck. Special care must be exercised in the proper placement of guys and preventers associated with the Burton or yard boom. Preventers, when used, must parallel as closely as possible the guys that they support. Guys and preventers must not be attached to the same fitting.

While under a load, the cargo falls (running rigging) must not be permitted to chafe on any standing or other running gear. Special attention must be paid to ensure that cargo runners work freely through the heel block, without chafing the cheek of the block. Also, bobbing chains and heel block preventers must be attached so as to not interfere with the movement of the cargo runners.

Appendix IV to Part 1918—Special Cargo Gear and Container Spreader Test Requirements (Mandatory) [See § 1918.61 (f), (g), (h); Also Applicable to § 1917.50(c)(5)]

Type gear	Test requirement	Tested by	Proof test	
All Special Cargo Handling Gear Purchased or Manufactured on or After January 21, 1998				
Safe Working Load—> 5 short tons (10,000 lbs./4540 kg.).	Prior to initial use	OSHA Accredited agency only.	Up to 20 short tons	125% SWL.
	Prior to reuse after structural damage repair.	.....	Between 20 and 50 short tons.	5 short tons in excess of SWL.
	Every four years after initial proof load test.	OSHA Accredited agency or designated person..	Over 50 short tons	110% SWL.
Safe Working Load—5 short tons or less	Prior to initial use	OSHA Accredited agency or designated person.	125% SWL.	
	Prior to reuse after structural damage repair.		125% SWL	
Container spreaders not part of vessel's cargo handling gear.	Prior to initial use	OSHA Accredited agency only.		
	Prior to reuse after structural damage repair.			
	Every four years after initial proof load test.	OSHA Accredited agency or designated person.	125% SWL.	
All Special Cargo Handling Gear in Use Prior to January 21, 1998				
Safe Working Load—> 5 short tons (10,000 lbs./4540 kg.).	Every four years from January 21, 1998.	OSHA Accredited agency or designated person.	Up to 20 short tons	125% SWL.
	Prior to reuse after structural damage repair.	.....	Between 20 and 50 short tons.	5 short tons in excess of SWL.
	.....	.....	Over 50 short tons	110% SWL.
Safe Working Load—5 short tons or less	Prior to initial use	OSHA Accredited agency or designated person.	125% SWL	
	Prior to reuse after structural damage repair.		125% SWL	
Container spreaders not part of vessel's cargo handling gear.	Prior to initial use	OSHA Accredited agency or designated person.	125% SWL	
	Prior to reuse after structural damage repair.			

Appendix V to Part 1918—Basic Elements of a First Aid Training Program (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidelines for small businesses, institutions teaching first aid, and the recipients of first aid training.

General Program Elements

A. Teaching Methods

1. Trainees should develop ''hands on'' skills through the use of manikins and trainee partners during their training.

2. Trainees should be exposed to acute injury and illness settings as well as the appropriate response to those settings through the use of visual aids, such as video tape and slides.

3. Training should include a course workbook which discusses first aid principles and responses to settings that require interventions.

4. Training duration should allow enough time for particular emphasis on situations likely to be encountered in particular workplaces.

5. An emphasis on quick response to first aid situations should be incorporated throughout the program.

B. Principles of Responding to a Health Emergency

The training program should include instruction in:

1. Injury and acute illness as a health problem.

2. Interactions with the local emergency medical services system. Trainees have the responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees.

3. The principles of triage.

4. The legal aspects of providing first aid services.

C. Methods of Surveying the Scene and the Victim(s)

The training program should include instruction in:

1. The assessment of scenes that require first aid services including:

a. general scene safety.

b. likely event sequence.

c. rapid estimate of the number of persons injured.

d. identification of others able to help at the scene.

2. Performing a primary survey of each victim including airway, breathing, and circulation assessments as well as the presence of any bleeding.

3. The techniques and principles of taking a victim's history at the scene of an emergency.

4. Performing a secondary survey of the victim including assessments of vital signs, skin appearance, head and neck, eye, chest, abdomen, back, extremities, and medical alert symbols.

D. Basic Adult Cardiopulmonary Resuscitation (CPR)

Basic adult CPR training should be included in the program. Retesting should occur every year. The training program should include instruction in:

1. Establishing and maintaining adult airway patency.

2. Performing adult breathing resuscitation.

3. Performing adult circulatory resuscitation.

4. Performing choking assessments and appropriate first aid interventions.

5. Resuscitating the drowning victim.

E. Basic First Aid Intervention

Trainees should receive instruction in the principles and performance of:

1. Bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee.

2. Splinting of the arm, elbow, clavicle, fingers, hand, forearm, ribs, hip, femur, lower leg, ankle, knee, foot, and toes.

3. Moving and rescuing victims including one and two person lifts, ankle and shoulder pulls, and the blanket pull.

F. Universal Precautions

Trainees should be provided with adequate instruction on the need for and use of universal precautions. This should include:

1. The meaning of universal precautions, which body fluids are considered potentially infectious, and which are regarded as hazardous.

2. The value of universal precautions for infectious diseases such as AIDS and hepatitis B.

3. A copy of OSHA's standard for occupational exposure to bloodborne pathogens or information on how to obtain a copy.

4. The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them.

5. The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material.

6. The appropriate management of blood spills.

G. First Aid Supplies

The first aid provider should be responsible for the type, amount, and maintenance of first aid supplies needed for their particular worksite(s). These supplies need to be stored in a convenient area available for emergency access.

H. Trainee Assessments

Assessment of successful completion of the first aid training program should include instructor observation of acquired skills and written performance assessments. First aid skills and knowledge should be reviewed every three years.

I. Program Update

The training program should be periodically reviewed with current first aid techniques and knowledge. Outdated material should be replaced or removed.

Specific Program Elements

A. Type of Injury Training

1. Shock

Instruction in the principles and first aid intervention in:

a. shock due to injury.

b. shock due to allergic reactions.

c. the appropriate assessment and first aid treatment of a victim who has fainted.

2. Bleeding

a. the types of bleeding including arterial, venous, capillary, external, and internal.

b. the principles and performance of bleeding control interventions including direct pressure, pressure points, elevation, and pressure bandaging.

c. the assessment and approach to wounds including abrasions, incisions, lacerations, punctures, avulsions, amputations, and crush injuries.

d. the principles of wound care including infection precautions, wounds requiring medical attention, and the need for tetanus prophylaxis.

3. Poisoning

Instruction in the principles and first aid intervention of:

a. alkali, acid and systemic poisons. In addition, all trainees should know how and when to contact the local Poison Control Center.

b. inhaled poisons including carbon monoxide, carbon dioxide, smoke, and chemical fumes, vapors and gases as well as the importance of assessing the toxic potential of the environment to the rescuer and the need for respirators.

Trainees should be instructed in the acute effect of chemicals utilized in their plants, the location of chemical inventories, material safety data sheets (MSDS's), chemical emergency information, and antidote supplies.

c. topical poisons including poison ivy, poison sumac, poison oak, and insecticides.

d. drugs of abuse including alcohol, narcotics such as heroin and cocaine, tranquilizers, and amphetamines.

4. Burns

Instruction in the principles and first aid intervention of:

a. assessing the severity of the burn including first degree, second degree, and third degree burns.

b. differentiating between the types of third degree burns (thermal, electrical, and chemical) and their specific interventions. Particular attention should be focused upon chemical burns, and the use of specific chemicals in the workplace which may cause them.

5. Temperature Extremes

Instruction in the principles and first aid intervention of:

a. exposure to cold including frostbite and hypothermia.

b. exposure to heat including heat cramps, heat exhaustion, and heat stroke.

6. Musculoskeletal Injuries

The training program should include instruction in the principles and first aid intervention in:

a. open fractures, closed fractures, and splinting.

b. dislocations, especially the methods of joint dislocations of the upper extremity. The importance of differentiating dislocations from fractures.

c. joint sprains.

d. muscle strains, contusions, and cramps.

e. head, neck, back, and spinal injuries.

7. Bites and Stings

Instruction in the principles and first aid intervention in:

a. human and animal (especially dog and snake) bites.

b. bites and stings from insects (spiders, ticks, scorpions, hornets and wasps). Interventions should include responses to anaphylactic shock; other allergic manifestations; rabies and tetanus prophylaxis.

8. Medical Emergencies

Instruction in the principles and first aid intervention of:

a. heart attacks

b. strokes

c. asthma attacks

d. diabetic emergencies including diabetic coma, insulin shock, hyperglycemia, and hypoglycemia.

e. seizures including tonic-clonic and absence seizures. Importance of *not* putting gags in mouth.

f. pregnancy including the appropriate care of any abdominal injury or vaginal bleeding.

9. Confined Spaces

a. the danger of entering a confined space to administer first aid without having the appropriate respiratory protection.

b. if first aid personnel will be required to assist evacuations from confined spaces, additional training will be needed.

B. Site of Injury Training

Instruction in the principles and first aid intervention of injuries to the following sites:

1. Head and Neck

a. including skull fractures, concussions, and mental status assessments with particular attention to temporary loss of consciousness and the need for referral to a physician.

b. including the appropriate approach to the management of the individual who has suffered a potential neck injury or fracture.

2. Eye

a. foreign bodies, corneal abrasions and lacerations.

b. chemical burns and the importance of flushing out the eye.

c. the importance of not applying antibiotics without physician supervision.

3. Nose

a. nose injuries and nose bleeds.

4. Mouth and Teeth

a. oral injuries, lip and tongue injuries, and broken and removed teeth. The importance of preventing inhalation of blood and teeth.

5. Chest

a. rib fractures, flail chest, and penetrating wounds.

6. Abdomen

a. blunt injuries, penetrating injuries, and protruding organs.

7. Hand, Finger, and Foot Injuries

a. finger/toe nail hematoma, lacerations, splinters, finger nail avulsion, ring removal, and foreign bodies.

b. the importance of identifying amputation care hospitals in the area. When an amputation occurs, appropriate handling of amputated fingers, hands, and feet during the immediate transportation of the victim and body part to the hospital.

[FR Doc. 97–19381 Filed 7–15–97; 8:45 am]

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Friday
July 25, 1997

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1, et al.

Federal Acquisition Regulation; Editorial and Technical Changes To Conform the CFR to the Looseleaf Edition; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 5, 7, 8, 9, 11, 12, 15, 19, 26, 27, 29, 30, 31, 32, 38, 42, 45, 46, 50, 51, 52, and 53

Federal Acquisition Regulation; Editorial and Technical Changes To Conform the CFR to the Looseleaf Edition

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Editorial and technical changes are being made to the Federal Acquisition Regulation (FAR) to make it more accurate.

These changes to the Code of Federal Regulations have already been incorporated into the 1997 looseleaf edition of the FAR, which is scheduled for release through the Superintendent of Documents, Government Printing Office, in July.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 4, 5, 7, 8, 9, 11, 12, 15, 19, 26, 27, 29, 30, 31, 32, 38, 42, 45, 46, 50, 51, 52, and 53

Government Procurement.

Editorial and Technical Amendments

For the reason set forth above 48 CFR Parts 1, 4, 5, 7, 8, 9, 11, 12, 15, 19, 26, 27, 29, 30, 31, 32, 38, 42, 45, 46, 50, 51, 52, and 53 are amended as set forth below.

The authority citation for 48 CFR 1, 4, 5, 7, 8, 9, 11, 12, 15, 19, 26, 27, 29, 30, 31, 32, 38, 42, 45, 46, 50, 51, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.105–3 [Amended]

1. At 1.105–3 add ''CD–ROM,'' following ''loose-leaf,''.

1.201–2 [Amended]

2. At 1.201–2 remove paragraph (b)(2) and redesignate paragraphs (b)(3) through (5) as (b)(2) through (4).

PART 4—ADMINISTRATIVE MATTERS

4.602 [Amended]

3. At 4.602, in paragraph (b), remove the phrase ''FTS 441–1529,''.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.201 [Amended]

4. 5.201 is amended in paragraph (d) by revising the telephone number at the end of the paragraph to read ''Telephone (202) 512–1800.''

5.207 [Amended]

5. 5.207(a)(2) is amended by revising the address which follows ''to:'' to read: ''Commerce Business Daily, U.S. Government Printing Office, P.O. Box 77880, Washington, DC 20013–8880.''

PART 7—ACQUISITION PLANNING

7.103 [Amended]

6. In 7.103(m) revise the reference to ''11.001(b)'' to read ''11.002(b)''.

7.105 [Amended]

7. 7.105 is amended at the end of paragraph (b)(13)(ii) by removing ''and'' at the end of the paragraph; and at the end of paragraph (b)(13)(iii) by removing the period and inserting ''; and''.

7.307 [Amended]

8. At 7.307, amend paragraph (b) by removing ''as prescribed in 14.408–8, Protests against award.'' and inserting ''as prescribed in subpart 33.1, Protests.''

9. 7.403(b)(2) is revised to read as follows:

7.403 General Services Administration assistance.

* * * * *

(b) * * *

(2) Federal Supply Service, Office of Acquisition (FC), Washington, DC 20406, for information on other types of equipment.

7.503 [Amended]

10. In 7.503(d)(11) ''Defense Industrial Security Program'' is revised to read ''National Industrial Security Program''.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.501 [Amended]

11. At 8.501, the definitions ''Bureau helium distributor'' and ''Bureau of Mines'' are amended by revising ''Bureau of Mines'' to read ''Bureau of Land Management'' (3 times).

8.502 [Amended]

12. 8.502 is amended in the introductory text, (b)(1)(i) and (b)(2) by revising ''Bureau of Mines'' to read ''Bureau of Land Management''.

8.504 [Amended]

13. 8.504(a) and (b) are amended by revising ''Bureau of Mines'' to read ''Bureau of Land Management'' each time it appears.

8.901 [Amended]

14. At 8.901 in paragraph (b) ''(KRB), FMSS Contracting Officer, 18th and F Streets NW, Washington, DC 20405'' is revised to read ''(TFB), FMSS Contracting Officer, 5203 Leesburg Pike, Suite 1100, Falls Church, VA 22041.''

PART 9—CONTRACTOR QUALIFICATIONS

9.404 [Amended]

15. At 9.404(d)(1)(ii) the telephone number is revised to read ''(202) 512–1800''.

PART 11—DESCRIBING AGENCY NEEDS

11.201 [Amended]

16. At 11.201(d) remove the word ''Bureau'' following ''Federal Supply Service'' and revise the telephone number following ''(202)'' to read ''619–8925''.

11.701 [Amended]

17. At 11.701(c) introductory text, the reference to ''52.212–10'' is revised to read ''52.211–17''.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.214 [Amended]

18. At 12.214 revise the reference to ''Appendix B'' to read ''Appendix''.

PART 15—CONTRACTING BY NEGOTIATION

19. At 15.804–6, in Table 15–2, under item 8B, at the entry ''Under Column 6'' revise the last sentence to read ''Column (5) less Column (4) = Column (6)''

PART 19—SMALL BUSINESS PROGRAMS

19.702 [Amended]

20. At 19.702(d), in the second sentence the telephone number is revised to read ''(703) 695–1536''.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.103 [Amended]

21. At 26.103(b), the phrase ''MS–334A–SIB, Washington, DC 20245'' is revised to read ''MS–2626–MIB, Washington, DC 20240–4000''.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.302 [Amended]

22. At 27.302, at the beginning of paragraph (a), remove the ''(1)'' which follows the word ''Introduction''.

PART 29—OTHER SOCIOECONOMIC PROGRAMS

29.304 [Amended]

23. At 29.304(d)(3), in the last sentence, the address is revised to read: ''State of North Carolina, Department of Revenue, P.O. Box 25000, Raleigh NC 27640.''

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

24. Part 30 is amended by revising the phrase ''Appendix B'' to read ''Appendix'' at:

Section and Paragraph

30.000 (2 times)
30.101(c)
30.201 (2 times)
30.201–1
30.201–2
30.201–3 (a) and (b) (2 times)
30.201–4 (a)(1) (2 times) and (a)(2), (b)(1) & (2), (c), (e)(1) (3 times) (e)(2) (2 times)
30.201–5
30.201–6
30.201–7
30.202–1
30.202–2
30.202–3
30.202–4
30.202–5
30.202–6(a)
30.202–7(a)
30.202–8(b)
Subpart 30.3 Note
Subpart 30.4 Note
Subpart 30.5 Note
30.602 introductory text

30.102 [Amended]

25. 30.102 is amended by revising the telephone number at the end of the section to read ''(202) 512–1800''.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–46 [Amended]

26. At 31.205–46(a)(2)(i) the stock number at the end of the paragraph is revised to read ''922–002–00000–2''.

PART 32—CONTRACT FINANCING

32.503–7 [Amended]

27. 32.503–7 is amended in the introductory text by removing the phrase ''Appendix B'' and inserting ''Appendix''.

28. 32.907–1 is amended by revising paragraph (g)(3)(i) as follows:

32.907–1 Late invoice payment.

* * * * *

(g) * * *

(3)(i) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(A) The additional penalty shall not exceed $5,000;

(B) The additional penalty shall never be less than $25; and

(C) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

38.101 [Amended]

29. 38.101 is amended in the second sentence of paragraph (a) by removing ''possible'' and inserting ''possibly''.

38.201 [Amended]

30. 38.201(b) ''Office of Commodity Management (FC)'' is revised to read ''Office of Acquisition (FC)''.

PART 42—CONTRACT ADMINISTRATION

31. In 42.102(a) the second and third sentences are revised to read as follows:

42.102 Procedures.

(a) * * * Questions regarding contract administration offices may be referred to: HQ Defense Logistics Agency, ATTN: DLA: DASC–WP, 8725 John J Kingman Road, Fort Belvoir, VA 22060. Questions regarding audit offices may be referred to the: Defense Contract Audit Agency, ATTN: CMO Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. * * *

42.302 [Amended]

32. At 42.302(a)(11) introductory text the reference to ''Appendix B'' is revised to read ''Appendix''.

PART 45—GOVERNMENT PROPERTY

45.607–2 [Amended]

33. 45.607–2(b), in the last sentence, beginning with ''DOD Precious Metals Recovery Program'' the address is revised to read: ''Defense Logistics Agency, ATTN: DLA: SIP, 8725 John J Kingman Road, Fort Belvoir, VA 22060.

45.608–6 [Amended]

34. At 45.608–6, in paragraph (b), ''the Administrator, General Services Administration'' is removed and the following address is inserted in its place as follows: ''General Services Administration, Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), 1800 F Street NW., Washington, DC 20405''.

PART 46—QUALITY ASSURANCE

46.601 General.

35. Under Subpart 46.6—Material Inspection and Receiving Reports, a section heading is added to the text to read as set forth above.

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

50.104 [Amended]

36. At 50.104(b), in the first sentence of the introductory text, revise the internal references ''(1)'' and ''(2)'' to read ''(b)(1)'' and ''(b)(2)''.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.102 [Amended]

37. At 51.102(c)(1) remove ''FSR'' and insert ''FCSI''; at paragraph (c)(4) the address is revised to read as follows: ''Department of the Interior, Bureau of Land Management, Helium Field Operations, 801 S. Fillmore Street, Amarillo, TX 79101–3545 and at (e)(3)(iii) remove ''Bureau of Mines'' and insert ''Bureau of Land Management''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.101 [Amended]

38. At 52.101, in paragraph (b)(1), amend the fourth sentence by removing ''texts'' and inserting ''text''.

52.102–1 [Amended]

39. At 52.102–1, amend paragraph (c)(1) by removing ''Solicitations'' and inserting ''Solicitation''.

52.106 [Removed and Reserved]

40. 52.106 is removed and reserved.

52.200 [Amended]

41. 52.200 is amended by removing ''texts'' and inserting ''text''.

52.203–11 [Amended]

42. At 52.203–11, amend paragraph (b) in the introductory text by removing the comma following ''1989''.

52.203–12 [Amended]

43. At 52.203–12 revise the clause date to read ''(Jun 1997)''; in paragraph (a) amend the definition of ''Covered Federal action'' by redesignating paragraphs (a) through (e) as (1) through (5), respectively; and in the definition ''Officer or employee of an agency'' redesignate paragraphs (a) through (d) as (1) through (4), respectively.

52.204–3 [Amended]

44. At 52.204–3 revise the clause date to read ''(Jun 1997)'' and amend paragraph (e) by removing ''clause'' and inserting ''provision'' at the end of the first sentence.

52.208–8 [Amended]

45. At 52.208–8 revise the clause date to read ''(Jun 1997)'' and at paragraphs (a) in the definitions of *Bureau helium distributor* and *Bureau of Mines* (3 times), (b)(2)(i) and (ii), (b)(3) introductory text, and (c)(2) revise ''Bureau of Mines'' to read ''Bureau of Land Management''.

52.211–1 [Amended]

46. In 52.211–1 revise the clause date to read ''(Jun 1997)'' and at paragraph (a) revise the parenthetical containing two telephone numbers to read ''(Telephone (202) 619–8925)''.

52.211–2 [Amended]

47. In 52.211–2 revise the clause date to read ''(Jun 1997)'' and remove the last paragraph which begins with ''Telephone Order Entry System * * *''

52.211–8 and 52.211–9 [Amended]

48. At 52.211–8 and 52.211–9 revise the clause date to read ''(Jun 1997)'' and redesignate paragraphs (b)(i) and (ii) of the clauses as (b)(1) and (2).

52.212–1 [Amended]

49. At 52.212–1 revise the clause date to read ''(Jun 1997)'' and at the end of paragraph (i)(1) revise the telephone number to read ''((202) 619–8925)''.

52.215–10 [Amended]

50. At 52.215–10 revise the clause date to read ''(Jun 1997).''

52.219–8 [Amended]

51. At 52.219–8, revise the clause date to read ''(Jun 1997)'' and redesignate paragraphs (d)(i) and (ii) of the clause as (d)(1) and (2).

52.225–5 [Amended]

52. At 52.225–5 revise the clause date to read ''(Jun 1997)'' and, in the parenthetical of paragraph (b)(2) revise ''accepted'' to read ''excepted''.

52.225–15 [Amended]

53. At 52.225–15 revise the clause date to read ''(Jun 1997)'' and, in the parenthetical of paragraph (b)(3), revise ''accepted'' to read ''excepted''.

52.227–11 [Amended]

54. At 52.227–11 revise the clause date to read ''(Jun 1997)'' and in paragraph (a)(2) remove ''of'' the first time it appears and insert ''or'' in its place.

52.227–16 [Amended]

55. At 52.227–16 insert ''(End of clause)'' at the end of the section.

56. At 52.232–25 revise the clause date; remove from the beginning of paragraph (a)(7)(i) introductory text ''If this contract was awarded on or after October 1, 1989,''; and revise paragraph (a)(7)(iii)(A) to read as follows:

52.232–25 Prompt Payment.

* * * * *

Prompt Payment (Jun 1997)

* * * * *

(a) * * *

(7) * * *

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(*1*) The additional penalty shall not exceed $5,000;

(*2*) The additional penalty shall never be less than $25; and

(*3*) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

* * * * *

57. At 52.232–26 revise the clause date; remove, from the beginning of paragraph (a)(6)(i) introductory text, ''If this contract was awarded on or after October 1, 1989,''; and revise paragraph (a)(6)(iii)(A) to read as follows:

52.232–26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

* * * * *

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (JUN 1997)

* * * * *

(a) * * *

(6) * * *

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(*1*) The additional penalty shall not exceed $5,000;

(*2*) The additional penalty shall never be less than $25; and

(*3*) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

* * * * *

58. 52.232–27 revise the clause date; remove from the beginning of paragraph (a)(6)(i) introductory text, ''If this contract was awarded on or after October 1, 1989,''; and revise paragraph (a)(6)(iii)(A) to read as follows:

52.232–27

Prompt Payment for Construction Contracts.

* * * * *

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (JUN 1997)

* * * * *

(a) * * *

(6) * * *

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(*1*) The additional penalty shall not exceed $5,000;

(*2*) The additional penalty shall never be less than $25; and

(*3*) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

* * * * *

52.237–3 [Amended]

59. At 52.237–3, in the second sentence of paragraph (c), ''onsite'' is revised to read ''on-site''.

60. At 52.247–64 revise the clause date; revise the address in paragraphs (c)(1)(ii) and (f); also in (f) revise the telephone number to read as follows :

52.247–64 Preference for Privately-Owned U.S.-Flag Commercial Vessels.

* * * * *

PREFERENCE FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS (JUN 1997)

* * * * *

(c)(1)(ii) Office of Cargo Preference, Maritime Administration (MAR–590), 400 Seventh Street, SW, Washington, DC 20590. * * *

* * * * *

(f) * * * Office of Cargo Preference, Maritime Administration (MAR–590), 400 Seventh Street, SW, Washington, DC 20590, Phone: 202–366–4610.

* * * * *

61. At 52.247–67 revise the clause date and amend paragraph (b) to revise the address at the end of the first sentence as follows:

52.247–67 Submission of Commercial Transportation bills to the General Services Administration for Audit.

* * * * *

SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

* * * * *

(b) * * * General Services Administration, ATTN: FWA, 1800 F Street, NW., Washington, DC 20405.

* * *

* * * * *

52.301 [Amended]

62. Add a note under 52.301 to read as follows:

52.301 Solicitation provisions and contract clauses (Matrix).

Note: The FAR matrix is not carried in the CFR. It is available in the loose-leaf edition.

PART 53—FORMS

53.103 [Amended]

63. At 53.103(b) remove the parenthetical at the end of the paragraph.

52.301–25 and

53.301–28 [Revised]

64. 53.301–25 and 53.301–28 (Standard forms 25 and 28) are revised to read as follows:

BILLING CODE 6820–EP–P

53.301–25 Performance Bond.

PERFORMANCE BOND *(See instructions on reverse)*	DATE BOND EXECUTED *(Must be same or later than date of contract)*	OMB No.: **9000-0045** Expires: 09/30/98

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

PRINCIPAL *(Legal name and business address)*	TYPE OF ORGANIZATION *("X" one)* ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) *(Name(s) and business address(es))*	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal -

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) *(Typed)*	1.	2.	3.	

INDIVIDUAL SURETY(IES)

SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) *(Typed)*	1.	2.

CORPORATE SURETY(IES)

SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) *(Typed)*	1.	2.	

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STANDARD FORM 25 (REV. 5-96)
Prescribed by GSA-FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) *(Continued)*

SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) *(Typed)*	1.	2.		

BOND PREMIUM	RATE PER THOUSAND ($)	TOTAL ($)
▶		

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

53.301–28 Affidavit of Individual Surety.

AFFIDAVIT OF INDIVIDUAL SURETY

(See instructions on reverse)

OMB No.: **9000-0001**
Expires: 09/30/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FAR Secretariat (MVR), Federal Acquisition Policy Division, Office of Policy, Planning, and Evaluation, GSA, Washington, DC 20405.

STATE OF

COUNTY OF

SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME *(First, Middle, Last) (Type or Print)*

2. HOME ADDRESS *(Number, Street, City, State, ZIP code)*

3. TYPE AND DURATION OF OCCUPATION

4. NAME AND ADDRESS OF EMPLOYER *(If Self-employed, so State)*

5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED *(If any) (Number, Street, City, State, ZIP Code)*

6. TELEPHONE NUMBER
HOME -
BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate *(Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)*

(b) Assets other than real estate *(describe the assets, the details of the escrow account, and attach certified evidence thereof).*

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES *(Where appropriate)*

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED
MONTH DAY YEAR

b. CITY AND STATE *(Or other jurisdication)*

Official Seal

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH

d. SIGNATURE

e. MY COMMISSION EXPIRES

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STANDARD FORM 28 (REV. 6/96)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall complete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety shall have the completed form notarized.

2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.

3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations - any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or posssession of the United States.

4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

BILLING CODE 6820–EP–C–A

53.301–281 Standard Form 281, FPDS—Summary Contract Action ($25,000 or Less).

65. The heading of section 53.301–281 is revised to read as set forth above.

53.301–1408 Preaward Survey of Prospective Contractor—Accounting System.

66. For 53.301–1408 the heading is revised to read as set forth above.

53.301–1412 [Removed]

67. 53.301–1412 is removed.

53.301–1419 [Removed]

68. 53.301–1419 is removed.

69. At 53.302–336 remove the text preceding Optional Form 336. The text to be removed reads as follows:

''FAC 84–18 July 30, 1986''
''Part 53—Forms''
''53.302–336''

* * * * *

70.53.302–336 is further amended by removing the citation ''53–150.1'', which follows the Optional Form 336.

Signed: June 26, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–19384 Filed 7–24–97; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Friday
July 25, 1997

Part IV

Environmental Protection Agency

May 1997, Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51863; FRL–5726–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from May 1, 1997 to May 31, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51863]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTAL INFORMATION. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''[OPPTS–51863]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPPTS–51863]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 80 Premanufacture Notices Received From: 05/01/97 to 05/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0626	05/01/97	07/29/97	CBI	(S) Laminatingt adhesive for the industrial laminates	(G) Polyurethane polymer
P–97–0627	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings in fabrics and textiles.	(G) Organooxy functional polyoxyalkylene siloxane
P–97–0628	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings for fabrics and textiles.	(G) Organooxy functional polyoxyalkylene siloxane
P–97–0629	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings in fabrics and textiles.	(G) Organooxy functional polyoxyalkylene siloxane
P–97–0630	05/02/97	07/31/97	CBI	(G) Component of coating with open use	(G) Epoxy acid ester
P–97–0631	05/02/97	07/31/97	CBI	(S) Coupling agent for industrial coating	(G) Alkoxy silane ester
P–97–0632	05/02/97	07/31/97	CBI	(S) Coupling agent for industrial coating	(G) Alkoxy silane ester
P–97–0633	05/02/97	07/31/97	CBI	(S) Coupling agent for industrial coating	(G) Alkoxy silane ester
P–97–0634	05/02/97	07/31/97	CBI	(S) Coupling agent for industrial coating	(G) Alkoxy silane ester
P–97–0635	05/06/97	08/04/97	Shell Chemical Company	(S) Water scavenger in brake fluilds	(S) Boric acid, (h3bo3), mixed ester with polyethylene gylcol mono-bu ether and polyethylene glycol mono-me ether
P–97–0636	05/06/97	08/04/97	Shell Chemical Company	(S) Water scavenger in brake fluilds	(S) Poly(oxy-1,2-ethanediyl), alpha-butyl-omega-hydroxy, ester with boric acid (h3bo3)
P–97–0637	05/06/97	08/04/97	Shell Chemical Company	(S) Water scavenger in brake fluilds	(S) Poly(oxy-1,2-ethanediyl), alpha-methyl-omega-hydroxy, ester with boric acid (h3bo3)
P–97–0638	05/05/97	08/03/97	CBI	(G) Sealant component	(G) Isophthalic acid, polymer with alkanepolyols, methylenebis[isocyanatobenzene], dimethyl terephthalate, an alkanepolyol derivative and alkanepolycarboxylic acids
P–97–0639	05/05/97	08/03/97	CBI	(G) Catalyst	(S) Fatty acids, $C_{10–13}$, branched, zinc salts
P–97–0640	05/05/97	08/03/97	CBI	(G) Catalyst	(S) Fatty acids, $C_{9–13}$, neo, zinc salt
P–97–0641	05/08/97	08/06/97	CBI	(G) Thickener for cleaning formulations that may contain acids, surfactants, abrasives, etc.	(G) Modified acrylic terpolymer
P–97–0642	05/06/97	08/04/97	Ifs Industries, Inc.	(S) Adhesives for bonding sponges; adhesives for panel assembly	(S) Polyurethane polymer (complex polymer)
P–97–0643	05/07/97	08/05/97	E. I. duPont deNemours & Company, Specialty Chemicals	(S) Additive for fibers to provide water and oil repellancy	(G) Partially fluorinated aliphatic compound
P–97–0644	05/09/97	08/07/97	E. I. duPont deNemours & Company, Specialty Chemicals	(S) Additive for fibers to provide water and oil repellency	(G) Partially fluorinated aliphatic ester
P–97–0645	05/07/97	08/05/97	Landec labs, inc.	(S) Thermoset curing agent	(G) Acrylic copolymer with imidazole
P–97–0646	05/08/97	08/06/97	CBI	(G) Coating component	(G) Polymer from methylene diphenyl diisocyanate and (polymer from hexanedioic acid 1,4 butane diol and 2,2 - dimethyl-1,3 propanediol)
P–97–0647	05/08/97	08/06/97	CBI	(G) Structural urethane plastic	(G) Polymer from methylene diphenyl diisocyanate and (polymer from hexanedioic acid 1,4 butane diol and 2,2 - dimethyl-1,3 propanediol)
P–97–0648	05/08/97	08/06/97	CBI	(S) Site limited raw material/ reactant in synthesis of an organic compound	(S) Benzeneamine, 3,5-difluoro-
P–97–0649	05/08/97	08/06/97	CBI	(S) Site limited intermediate in the synthesis of an organic compound	(S) Hydrazine carboxamide,*N*-(3,5-difluorophenyl-)
P–97–0650	05/12/97	08/10/97	CBI	(G) Wood coatings; paper coatings; electronics	(G) Polyether acrylate

I. 80 Premanufacture Notices Received From: 05/01/97 to 05/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0651	05/12/97	08/10/97	CBI	(G) Wood coatings; paper coatings; electronics	(G) Polyether acrylate
P–97–0652	05/09/97	08/07/97	Courtaulds aerospace	(S) Polymer for sealants and adhesives	(G) Thiol terminated, poly (thioether) polyether
P–97–0653	05/09/97	08/07/97	Cerestar USA, Inc.	(S) Sequestering agent for metal ions such as iron, copper and aluminium; an ingredient of melamine resins, polyurethanes and alkyd resins, as well as a building block for surfactants; sugar-free bakery and confectionery applications	(S) D-Glucitol, 4-0-a-d-glucopyranosyl
P–97–0654	05/13/97	08/11/97	Burlington Chemical Company, Inc	(G) Dye leveler for textile dyeing	(G) Alkyl ester of aryl ethoxylate
P–97–0655	05/12/97	08/10/97	CBI	(G) Contained use: application to reactor walls in order to prevent scale deposits during polymerization process	(G) Formaldehyde-phenolic resin, sodium salt, in aqueous solution
P–97–0656	05/12/97	08/10/97	CBI	(S) Encapsulating agent	(G) Polyurea
P–97–0657	05/13/97	08/11/97	CBI	(G) Make luminiscent materials	(G) Luminiscent pigment
P–97–0658	05/12/97	08/10/97	Summit Specialty Chemicals Corporation	(G) Outdoor furniture; farm equipment; fence poles others	(G) Hydrogenated bisphenol-a based epoxy resin
P–97–0659	05/13/97	08/11/97	CBI	(G) Processing aid	(G) Salt of a mixed amidoamine
P–97–0660	05/13/97	08/11/97	CBI	(G) Processing aid	(G) Salt of a mixed amidoamines
P–97–0661	05/15/97	08/13/97	CBI	(G) Modifier for starch based products	(G) Alkyl substituted aromatic glycidyl ether
P–97–0662	05/15/97	08/13/97	3m company	(S) Battery electrolyte	(S) Ethanesulfonamide, 1,1,2,2,2-pentafluoro-*N*-(pentafluoroethyl)sulfonyl-, lithium salt
P–97–0663	05/15/97	08/13/97	3M Company	(S) Intermediate	(G) Fluoroalkyl derivative
P–97–0664	05/15/97	08/13/97	3M Company	(S) Intermediate	(G) Acid fluoride derivative
P–97–0665	05/15/97	08/13/97	3M Company	(S) Chemical intermediate	(G) Fluoroalkyl salt
P–97–0666	05/15/97	08/13/97	3M Company	(S) Chemical intermediate	(G) Fluoroalkyl derivative
P–97–0667	05/16/97	08/14/97	Mace Adhesives & Coatings Company, Inc.	(S) UV/EB curable coatings for plastics, metal and wood UV/EB curable adhesives	(G) Aliphatic epoxyester
P–97–0668	05/16/97	08/14/97	Mace Adhesives & Coatings Company, Inc.	(S) UV/EB curable coatings for plastics, metal and wood UV/EB curable adhesives	(G) Aliphatic epoxyester
P–97–0669	05/16/97	08/14/97	CBI	(G) Open, non-dispersive (polyester)	(G) Polyester urethane preparation
P–97–0670	05/16/97	08/14/97	Reichhold Chemicals Inc	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0671	05/13/97	08/11/97	Hoechst Celanese	(G) Diesel fuel dulk additive	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, ether with*N*-(2-aminomethylethyl)-1,2-propanediame *N*-dodecyl *N,N,N,N*-tetrakis (2-hydroxyethyl) derivatve (4:1)
P–97–0672	05/20/97	08/14/97	H.B. Fuller Company	(S) Pressure-sensitive adhesive	(G) Acrylate-fuctionalized polyester
P–97–0673	05/20/97	08/14/97	H.B. Fuller Company	(S) Pressure-sensitive adhesive	(G) Acrylate-fuctionalized polyester
P–97–0674	05/20/97	08/14/97	H.B. Fuller Company	(S) Pressure-sensitive adhesive	(G) Acrylate-fuctionalized polyester
P–97–0675	05/20/97	08/14/97	H.B. Fuller Company	(S) Pressure-sensitive adhesive	(G) Acrylate-fuctionalized polyester
P–97–0676	05/13/97	08/11/97	CBI	(G) Polymer for industrial coatings	(S) Polymer of: safflower oil; glycerine; chlorenoic anhydride; maleic anhydride
P–97–0677	05/22/97		CBI	(G) Cocatalyst	(G) Mixed alkyl aluminoxanes
P–97–0678	05/20/97	08/18/97	The P.G. George Company	(S) Electrical insulation coating for copper wire	(G) Benzenetricarboxylic acid, polymer with ethanediol and bifunutional alkylaryl amine
P–97–0679	05/22/97	08/20/97	Dupont	(G) Intermediate; chemical conversion enclosed destructive use	(G) Halogenated sulfonyl ether
P–97–0680	05/21/97	08/19/97	CBI	(G) Urethane coating component/ elastomeric urethane	(G) Poly [oxy(methyl-1,2 ethanediyl], alpha, hydro-omega-hydroxy-, polymer with 1,3 diisocyanato methyl benzen

I. 80 Premanufacture Notices Received From: 05/01/97 to 05/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0681	05/21/97	08/19/97	CBI	(G) Coating component/ elastomeric urethane	(G) Reaction product of 2-oxepanone, polymer with 2,2 oxybis ethnol and dicyclohexane-4,4 ′ diisocyanate and hexanedioic acid polymer with 2-ethyl-2 (hydroxymethyl)-1,3 propanediol and 1,6-hexane-diol and dicydohexane-4,4 ′ diisocyanate
P–97–0682	05/21/97	08/19/97	CBI	(G) Urethane coating component/ elastomeric urethane	(G) Reaction product of tetramethyl xylene diisocyanate and hesandiol acid polymer with 1,4 butane diol and 2,2 dimethyl-1,3 propendiol and polymer of tetramethyl xylene diisocyante and polyester polyol
P–97–0683	05/23/97	08/21/97	Spies Hecker, Inc.	(S) Binder for car repair paints	(S) 1,4-cyclohexanedicarboxylic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 3,35-trimethyl hexanoate, compd with 2-(dimethylamino)ethanol
P–97–0684	05/22/97	08/20/97	Hoechst Celanese	(S) Polymerization catalyst	(S) Zirconium, dichloro [(dimethylsilylene) bis[(1,2,3,2a,7a.-eta.)-2-methyl-4-phenyl-1*h*-inden-1-ylidene]]-, stereoisomer
P–97–0685	05/23/97	08/21/97	CBI	(G) Lubricant additive	(G) Sodium sulfonate polymer
P–97–0686	05/22/97	08/20/97	Reichhold Chemicals	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0687	05/23/97	08/21/97	CBI	(S) Roof coatings	(G) Polyacrylates
P–97–0688	05/23/97	08/21/97	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene tint
P–97–0689	05/23/97	08/21/97	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene tint
P–97–0690	05/28/97	08/26/97	U.S. Polymers Inc.	(S) This resin can be used in baking enamils for can or coil coatings. it can also be used crosslinked with isocyanate enamels.	(G) Reaction product of: petroleum by products, di ethylene glycol, alphatic branched alcohol, and aliphatic cyclic anhydrides
P–97–0691	05/28/97	08/26/97	CBI	(G) Corrosion inhibitor	(G) Polyamine
P–97–0692	05/28/97	08/26/97	CBI	(S) Site limited raw material/reactant in synthesis of an organic compound	(S) 3-pyridinecarbosylic acid, 2-acetyl-
P–97–0693	05/28/97	08/26/97	Reichhold Chemicals Inc	(G) Polyurethane hot melt reactive adhesive	(G) Polyurethane adhesive
P–97–0694	05/28/97	08/26/97	Reichhold Chemicals Inc	(G) Polyurethane hot melt reactive adhesive	(G) Polyurethane adhesive
P–97–0695	05/27/97	08/25/97	Ciba-Geigy Corporation, Polymers Division	(G) Cure agent for civil engineering coatings. Cure agent for industrial and narine	(G) Aromatic epoxy resin, reaction products with polyethylene oxide, polyethylene/polypropylene oxide, 1,2-diaminocyclohexane, and 1,4-butanedioldigylcidyl ether
P–97–0696	05/27/97	08/25/97	Ciba-Geigy Corporation, Polymers Division	(G) Cure agent for civil engineering coatings. Cure agent for industrial and narine	(G) Aromatic epoxy resin, reaction products with polyethylene oxide, polyethylene/polypropylene oxide, 1,2-diaminocyclohexane, and 1,4-butanedioldigylcidyl ether
P–97–0697	05/27/97	08/25/97	Ciba-Geigy Corporation, Polymers Division	(G) Cure agent for civil engineering coatings. Cure agent for industrial and narine	(G) Aromatic epoxy resin, reaction products with polyethylene oxide, polyethylene/polypropylene oxide, *M*-xylylenediamine 1,2-diaminocyclohexane, and 1,4-butanedioldigylcidyl ether
P–97–0698	05/27/97	08/25/97	Ciba-Geigy Corporation, Polymers Division	(G) Cure agent for civil engineering coatings. Cure agent for industrial and narine	(G) Aromatic epoxy resin, reaction products with polyethylene oxide, polyethylene/polypropylene oxide, *m*-xylylenediamine 1,2-diaminocyclohexane, and 1,4-butanedioldigylcidyl ether

I. 80 Premanufacture Notices Received From: 05/01/97 to 05/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0699	05/27/97	08/25/97	Ciba-Geigy Corporation, Polymers Division	(G) Cure agent for civil engineering coatings. Cure agent for industrial and narine	(G) Aromatic epoxy resin, reaction products with polyethylene oxide, polyethylene/polypropylene oxide, *M*-xylylenediamine 1,2-diaminocyclohexane, and 1,4-butanedioldigylcidyl ether
P–97–0700	05/28/97	08/26/97	CBI	(G) Polymeric colorant/uv screen for plastics applications	(G) Chromophore substituted polyoxyalkylene
P–97–0701	05/28/97	08/26/97	CBI	(G) Coatings and inks for graphic arts applications.	(G) Polyester acrylate
P–97–0702	05/28/97	08/26/97	Ciba Specialty Chemicals Corporation	(G) Textile dye	(G) 1:1 cu(ii)complex of: 2-(substituted-[1,3,5]triazin-2-ylamino]-5-sulfophenylazo]-benzylidene-hydrazino]-4-sulfo-benzoic acid A-salt
P–97–0703	05/28/97	08/26/97	Gateway Additive Company	(S) Metalworking fluids, water estendable; cutting oils; industrial lubricants	(G) Polymer ester of mono and dibasic acids
P–97–0704	05/29/97	08/27/97	CBI	(S) Curative for epoxy formulation	(G) Polyamide
P–97–0705	05/29/97	08/27/97	CBI	(G) Resin coating	(G) Acrylated urethane
P–97–0706	05/29/97	08/27/97	CBI	(S) Raw material used in the manufacture of photoresists	(G) Aromatic sulfur compound

II. 48 NOTICES OF COMMENCEMENT RECEIVED FROM: 05/01/97 TO 05/31/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–0424	05/28/97	05/02/97	(G) Copolymer of methyl methacrylate,ethylene glycol dimethyacrylate and styrene
P–93–1218	05/09/97	10/23/97	(G) Potassium salt of mixed branched acids
P–93–1219	05/09/97	10/18/93	(G) Potassium salt of mixed branched acids
P–93–1631	04/26/97	04/25/97	(G) Azo chrominum cpmplex dyestuff
P–94–0477	05/20/97	05/07/97	(G) Saccharide derivative
P–94–0670	05/07/97	04/21/97	(G) Aminofunctional polydimethylsiloxane
P–94–1668	05/02/97	04/11/97	(G) 2-(4-substituted-2′-hydroxyphenyl)-5-chlorobenzotriazole
P–94–2038	05/13/97	04/29/97	(G) Amine terminated polyether
P–95–0866	05/20/97	04/24/97	(G) Iron(III)-EDTA complex(ethylene dinitrile) tetraacto ferrate
P–95–1369	05/01/97	04/18/97	(G) Anionic polyacrylamide
P–95–1904	05/21/97	04/23/97	(G) Calium alkyaryl substituted ethanoate
P–96–0063	05/22/97	11/06/97	(G) Copolymer with 2-propanoate acid
P–96–0320	05/13/97	05/06/97	(G) Halophenyl substituted triazolinoate
P–96–0327	05/22/97	05/16/97	(G) Amineophenyl substituted triazolinonee
P–96–0328	05/22/97	05/13/97	(G) Nitrophenyl substituted triazolinone
P–96–0572	05/20/97	05/09/97	(G) Aromatic boron complex
P–96–0674	05/08/97	04/16/97	(G) Parially fluorinated aliphatic ester
P–96–0775	05/09/97	04/29/97	(G) Modified hydrocarbon resin
P–96–0859	05/20/97	04/21/97	(G) Aliphatic polymer mixed with salt
P–96–1092	05/09/97	04/25/97	(G) Acid ester
P–96–1100	05/08/97	04/15/97	(G) Acid ester
P–96–1104	05/16/97	05/16/97	(G) Polyol resin
P–96–1288	05/28/97	05/11/97	(G) Hydrofluoroalkane
P–96–1326	05/20/97	04/24/97	(G) Silica supported magnesium-titanium catalyst
P–96–1496	05/28/97	05/19/97	(G) Silyl phosphate
P–96–1497	05/28/97	05/19/97	(G) Silyl phosphate
P–96–1500	05/28/97	05/02/97	(G) Substituted pyrone
P–96–1543	05/23/97	05/05/97	(G) Alkaryl polyoxyalkylene derivative
P–96–1568	05/13/97	05/07/97	(S) Hydrophobically modified polyurethane glycol-glycolutil copolymer
P–96–1571	05/08/97	04/09/97	(S) Hydrophobically modified polyurethane glycol-glycolutil copolymer
P–97–0053	05/09/97	04/15/97	(G) Acrylic polymer
P–97–0083	05/09/97	04/15/97	(G) Acrylic polymer
P–97–0152	05/09/97	04/15/97	(G) Fuorinated acrylic copolymer
P–97–0209	05/13/97	06/05/97	(G) Furan aldehyde
P–97–0210	05/23/97	05/15/97	(G) Carboxylic acid and ester functionalized polymer
P–97–0220	05/23/97	05/13/97	(G) Polyester resin
P–97–0221	05/23/97	05/15/97	(G) Polyester
P–97–0225	05/22/97	04/23/97	(G) Precious metal[(alkoxyalkylalkoxy)alkyl-2-mercaptopropanoato-
P–97–0242	05/23/97	05/15/97	(G) Polyurethane dispersion+
P–97–0244	05/22/97	04/23/97	(G) Polysulfide, poly[(polyhydro-alkane-cyclipolyalkyl)oxy

II. 48 NOTICES OF COMMENCEMENT RECEIVED FROM: 05/01/97 TO 05/31/97—Continued

Case No.	Received Date	Commence-ment/Import Date	Chemical
P–97–0247	05/22/97	04/23/97	(G) Precious metal[(alkoxyalkylalkoxy)alkyl-2-mercaptopropanoato-
P–97–0248	05/22/97	04/23/97	(G) Precious metal[(alkoxyalkylalkoxy)alkyl-2-mercaptopropanoato-
P–97–0261	05/23/97	05/15/97	(G) Polyester resin
P–97–0267	05/16/97	05/16/97	(G) Polyester resin
P–97–0275	05/07/97	04/21/97	(G) Aliphatic polyurethane acrylic oligomer
P–97–0315	05/14/97	04/27/97	(G) Maleic modified glycerol mono-alcohol ester of rosin
P–97–0336	05/20/97	05/12/97	(G) Fatty acids, tall-oil, phenol modified polymer with bisphenol A, formaldehyde, maleic anhydride, rosin tall oil and pentaerythritol
Y–93–0197	05/16/97	04/17/97	(G) Thermoplastic polyurethane elastomer resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: July 18, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–19670 Filed 7–24–97; 8:45 am]

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Reader Aids

Federal Register

Vol. 62, No. 143

Friday, July 25, 1997

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General amendments; comments due by 7-28-97; published 6-12-97
Safety fitness procedures—
Rating methodology; comments due by 7-28-97; published 5-28-97
Rating methodology; comments due by 7-28-97; published 7-3-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Controls and displays, accessibility and visibility; Federal regulatory review; comments due by 7-31-97; published 6-16-97

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Research and Special Programs Administration

Hazardous materials:
Hazardous materials transportation—
Non-specification open head fiber drum packaging; authority for shipping certain liquid hazardous materials extended; comments due by 8-1-97; published 6-2-97

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Alcohol, Tobacco and Firearms Bureau

Small Business Job Protection Act of 1996; implementation:
Wine; small producers' tax credit and bond provisions; conforming changes; comments due by 8-1-97; published 6-2-97

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Indorsement and payment of checks drawn on United States Treasury; reissuance of procedural changes; comments due by 7-29-97; published 5-30-97

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Au pair programs; participation requirements; comments due by 7-28-97; published 6-27-97